Supreme Court, U.S.
FILED

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No. 09-13257-EE

In The

SUPREME COURT OF THE UNITED STATES

Joaquin Brown
Petitioner

v.

Rachel Lewis, James Lewis, Richard Hagler, Judge Kenneth Followill and Child Support Services of Muscogee County Georgia
Respondents

On Petition for Writ of Certiorari
United States Court of Appeals for the 11th Circuit

PETITION FOR WRIT OF CERTIORARI

Joaquin Brown, Pro Se
1100 Statler Bend Dr.
Pflugerville, TX 78660
512.252.8290

QUESTIONS PRESENTED

1. Whether the respondents violated the petitioner's 42 USC § 1983 rights, privileges or immunities secured by the constitution and laws, by not contacting the petitioner on the adoption and division of property?

2. Whether the respondents employer can be held liable for violating the petitioner's 42 USC § 1983 rights, privileges or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress?

3. Did the respondents' abide by the section 510 of the Solider and Sailors Relief Act of 1940 and suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service?

4. Under the Soldiers and Sailors Relief Act of 1940 (50 U.S.C.A appendixes section 520, which provides that if there is a default of appearance by the petitioner in any proceedings plaintiff must file an affidavit; did the respondents file an affidavit showing that the petitioner is not in the military service?

5. Whether an adoption without the consent or notification of one parent violates that parent's XIV Amendment rights of the U.S. Constitution?

6. Whether property taken without knowledge or consent by one party violates due process of the law; and the XIV Amendment rights of the U.S. Constitution?

7. Whether continued garnishment of one parent's wages after the illegal adoption is fraud on the part of the respondents according to OCGA § 51-61-1,-2 ?

LIST OF PARTIES IN COURT BELOW

Joaquin Brown, Petitioner

Rachel Lewis, Respondent
James Lewis, Respondent
Richard Hagler, Respondent
Judge Kenneth Followill, employee of Muscogee County, Georgia, Respondent
Child Support Services of Muscogee County Georgia (OCSS), Respondent

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, petitioner states that it has no parent companies or nonwholly owned subsidiaries.

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INTRODUCTORY PRAYER

Joaquin Brown prays that the Supreme Court grants a writ of certiorari to review the judgment of the court below. The judgment of the United States Court of Appeals for the 11th Circuit was entered on January 12, 2010. On January 29, 2010, Petitioner timely filed a petition for Panel Rehearing which was denied on February 24, 2010.

CITATIONS OF OPINIONS AND ORDERS OF THE CASE

The opinion of the United States District Court for the Middle District Court of Georgia. The orders sought to be reviewed was entered on May 22, 2009 (appendices A) and June 25, 2009 (appendices B). The petition for appeal was presented on June 26, 2009. The opinion for the United States Court of Appeals for the 11th Circuit was filed on January 12, 2010 (appendices C). The petition for rehearing was filed with the court on January 29, 2010. Motion for denial filed by the United States Court of Appeals for the 11th Circuit was filed on February 24, 2010; reprinted as (appendices D).

Jurisdictional Statement

The judgment of the United States Court of Appeals for the 11th Circuit was entered on January 12, 2010. On January 29, 2010, Petitioner timely filed a Petition for Panel Rehearing. The court below entered an order (reprinted as Appendices D) denying the petition on February 24, 2010. This petition is filed within 90 days of that date, so that this Court has jurisdiction to review the judgment of the 11th Circuit on petition for certiorari rests by virtue of Section 1254(1) of the Judicial Code (28 U.S.C. § 1254(1)]

CONSTITUTIONAL PROVISIONS AND STATUES INVOLVED

The 14th Amendment, United States Constitution, provides:

All person born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of the law; nor deny to any person within its jurisdiction the equal protection of the laws.

Soldiers and Sailors Relief Act of 1940, 50 U.S.C.A appendix section 501 et seq:

Is to be administered as an instrument to accomplish substantial justice which requires an equitable consideration of the rights of both parties to the end that their respective interest may be properly conserved.

116 et seq:

It was an abuse of discretion for trial court to deny former husband's motion to set aside order increasing child and spousal support and awarding attorney fees to former wife where former husband was in the armed services and stationed in West Germany at time of entry of orders and neither former husband nor his attorney had received

notice of the proceedings.

510 et seq:

In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act [sections 501 to 591 of this appendix] remains in force.

520 et seq:

provides that if there is a default of appearance by the defendant in any proceeding, plaintiff shall file an affidavit showing that the defendant is not in the military service. If such an affidavit cannot be filed, plaintiff must file an affidavit showing that defendant is not in the military service or that plaintiff is unable to determine whether or not defendant is in such service. If an affidavit cannot be made showing that defendant is not in the service, the court shall not order the entry of judgment without appointing an attorney to represent defendant and protect his interests."

521 et seq:

At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on it's own motion, shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act [sections 501 to 591 of this appendix] ; unless, in the opinion of the court the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service.

42 USC § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress, except that in any action brought against a judicial officer for an act or emission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

1448 et. seq:

Parents possess a constitutionally protected liberty interest in the companionship and society of their children, and county's interference with such liberty interest without due process of the law is remediable under 42 USC § 1983.

1390 et.seq:

Where goal of alleged conspiracy was extortion to be accomplished by bringing prosecution against plaintiff without probable cause and for an improper purpose and injuries allegedly caused by the defendants' action include a deprivation of liberty concomitant to arrest and to pendency of criminal process, such deprivations without due process constituted an injury actionable under this section providing action for deprivation of rights under color of state law.

28 U.S.C. § 1332(a):

Because the Appellant and the Respondents are citizens of different states and the amount in controversy exceeds $75,000.; excluding interest and costs.

OCGA § 51-6-1; 51-6-2 (Fraud accomplished by damage; fraud and deceit)

Where Fraud was accomplished by an illegal adoption and the continuation of garnishment on an illegal adopted child. Deceit by the respondents by placing fraudulent paperwork in the court system.

STATEMENT OF THE CASE

This case is about an illegal adoption, illegal garnishment of wages for child support after the minor child was illegally adopted, fraud, failure to contact parties involved on an adoption and on all court proceedings in the Superior Court; which is a deprivation of any rights, privileges, or immunities secured by the Constitution per 42 USC § 1983, and a violation of the Soldiers and Sailors Relief Act of 1940; 50 USCS App. § 501 et.seq. This illegal adoption and all of the respondents' motions entered into the court system were without due process of the law. (1) the superior court erred in failing to at least appoint an attorney to represent the former husband, who was in the absence of his own counsel and serving in the United States Military; (2) refusing to vacate the previous order that were successfully set aside by Mr. Brown in Superior court. (3) Pursuing child support on an illegally adopted child. (4) Division of property that was awarded to the ex-wife along with attorney fees on orders that had been successfully set aside by the Petitioner. (5) Failure to contact or receive notice of court proceedings was an abuse of discretion on the court that allowed the respondents to profit in their own gains. (6) It was abuse of discretion for the court to allow the adoption and wage garnishment that increased child support and awarding attorney fees when Mr. Brown was not in court during these orders and was in the military. [There should have been a 'stay' under the Solider and Sailors' Civil Relief Act, 1940]. (7)The abuse of discretion by the respondents and their intentional

failure to acknowledge the Petitioner constitutional rights is a violation in its self. (8) The record failed to show or contain proof of service or affidavit to Mr. Brown (Petitioner) on all court proceeding with the respondents. (9) Fraud by the respondents with the continuation of child support and erroneous contempt charges on the petitioner. [OCGA § 51-6-1, 51-6-2, 51-7-1 and 51-7-40 for fraud, accompanied by damage to the party defrauded, always gives a right of action to the injured party.] (10) Appeals court failure to address the adoption in their judgment. (11) Failure to unseal the adoption records by the Appeal court. (12) District court refusal to address the adoption, stating only that there was an adoption granted by superior court.

HISTORY

In April, 1985, Rachel Lewis filed a complaint for a divorce with attorney J.Barrington Vaught. Joaquin Brown (defendant at that time) filed a defendant's plea, answer and cross-action in May of 1985, his attorney of record was Arthur L. Falkenstrom. The complaint, plea answer and cross-action asked for a division of property by 50%. In May, Joaquin Brown who was in the military received orders for the Advance Non-Commission Officer Course (reporting date was July 1, 1985) and for Germany after completion of the class. Rachel Lewis moved for a partial judgment on the pleadings, filed by J.Barrington Vaught on June 13,

1985. On June 19,1985 Rachel Lewis and her new attorney Richard Hagler, Joaquin Brown and his attorney A. Falkenstrom appeared in Superior Court. A final judgment and decree of divorce with reservations of issues for trial was ordered. The divorce was given with the right to: alimony, attorney's fees, child support and division of property reserved for trial at a later date. Mr. Brown informed the court that he was in the military with orders for Advance Non-Commission Officer Course and then Germany. Judge Followill asked if he was leaving the children in the home located at 438 Victoria Dr., Columbus, GA.; Mr. Brown answered yes. It was so ordered by Judge Followill to continue to pay the house mortgage ($450.00/mo) as child support until his return from Germany.

On July 8, 1985 (Civil Action File No. D85-1391) a temporary order was filed by Rachel Lewis and her attorney Richard Hagler. The first amendment to the divorce was file on July 11, 1985.

When Mr. Brown finished his training at Ft. Sill, OK; and before leaving for Germany in December 1985; he stopped in Mr. Hagler's office and paid $1,500 for the child support "payment" to ensure he would not be in the arrearage while getting settled in Germany. Hagler accepted the money but fail to inform Mr. Brown of any of the court proceedings that had occurred while he was in Oklahoma. In April 1986, Mr. Brown child support garnishment increased to $750.00 per month. Being in Germany Mr. Brown had no way of questioning the increase of garnishment; and in

turn Mr. Brown's paycheck was garnished by the child support office of Muscogee County on his two children and continued till January 29, 1989; and then the garnishment was reduced to $375.00 per month; for Mr. Brown's daughter that was still under the age of eighteen.

The Temporary Order became a Final order and Decree on 4-17-87. On January 29, 1988 another Amended Final Order decree was filed by the Respondents into the court. All of these orders were filed while Mr. Brown (Petitioner) was out of the state and/or country serving in the Military in West Germany. Mr. Brown should have been covered under the Solider and Sailors' Relief Act 1940, 50 USCS § 201 et seq. Respondents did not contact Mr. Brown of these orders. After returning from Germany, Mr. Brown hired an attorney to have the fraudulent and erroneous orders set aside. A Motion to Set Aside all previous orders was filed on March 29, 1989. On July 12, 1989 the Motion to Set Aside was successfully granted to Mr. Brown. Beginning on June 29, 1989 and then on August 24, 1989; R. Hagler and R. Lewis filed a citation for contempt for arrearage of $36,000.00 in child support. This citation for contempt (Aug. 24, 1989) was filed on an order that had just been successfully set aside (July 12) by the petitioner; plus all the orders had been fulfilled through child support garnishments by Muscogee County OCSS. Mr. Brown was only suppose to pay $450.00 per month but was garnished $750.00 by the Muscogee Child Support Services by fraudulent Orders by the Respondents. Rachel Lewis was also receiving

payments on rental property; and was cashing savings bonds.

Again, Mr. Brown was living outside the state of Georgia and still active in the military. Mr. Brown was notified of the court date set for September 7, 1989; and he issued a Motion for Continuance, in case he was unable to make the court date. Mr. Brown hired attorney Dorothy Williams on September 6, 1989. On September 7, 1989; Mr. Brown was jailed on false contempt charges. The respondents claimed arrearage for $36,000.00, the contempt charges stemming from August 24, 1989; although Muscogee County OCSS had been garnishing his pay check since 1986 - 1989. Richard Hagler was asked by the court how he came up with that amount and he stated "the child support services gave him that amount". Although all of the previous orders had just been successfully set aside on July 12, 1989; Mr. Brown was jailed by the court. D. Williams came to the jail and presented Mr. Brown an option; either to sign paperwork that gave his ex-wife everything and they would let him out of jail with all charges dropped or to stay in jail and pay $5,500.00. Mr. Brown refused to sign the paperwork and stayed in jail for nine (9) days; and only after he paid $5,000.00 to OCSS and $500 in attorney fees to Hagler then he was released from jail (September 16).

The respondents refused to vacate all previous orders that were successfully set aside on July 12, 1989.

Under 42 USC § 1983:

1390 et. seq: Where goal of alleged conspiracy was extortion to be accomplished by bringing prosecution against plaintiff without probable cause and for an improper purpose and injuries allegedly caused by the defendants' action include a deprivation of liberty concomitant to arrest and to pendency of criminal process, such deprivations without due process constituted an injury actionable under this section providing action for deprivation of rights under color of state law.

Also under 382 et. seq:

Direct participation is not necessary to hold official liable under § 1983; rather, any official who causes citizen to be deprived of her constitutional rights can also be held liable. Ryan v Illinois Dept. of Children & Family Services, C.D. Ill.1997, 963 F,Supp. 1490, reversed 185 F.3d 751.

The 11TH Circuit Court of Appeals claimed there is paperwork that Mr. Brown signed. Mr. Brown has not signed; did not sign nor gave permission for any paperwork to be signed. If any attorney signed paperwork it was without his consent or knowledge. Mr. Brown was never in arrearage of "child support" because; the unlawful paperwork for the excessive garnishments from 1986 to 1989 along with the cashing of savings bonds, clearing out savings accounts, property sold

and money from rental property ($400 per month) that Rachel Lewis stole with the help from the Respondents; ensured that R. Lewis was over paid.

In their "conspiracy" to extort was accomplished by bringing prosecution against the petitioner without probable cause and for an improper purpose and injuries caused by the respondents'. Their actions in the joint effort deprived Mr. Brown of his constitutional Article XIV rights.

Rachel Lewis, et al.; continued filing fraudulent and erroneous contempt orders:

September 13, 1989 for $17,450.00,
January 26, 1990 for $5,000.00,
February 22, 1990 for $14,325.00
and again on May 25, 1990.

All of the contempt orders stemming from the temporary order that had been successfully set aside on July 12, 1989 that the respondents refused to vacate.

Also during this time period, March 1989 to December 1990 Mr. Brown had only been in court twice; although the Respondents filed over twenty-one (21) separate motions into the court system; and these did not include the paperwork required for a legal adoption per Georgia law. During this time frame James Lewis illegally adopted Mr. Brown's minor daughter without his consent. The Respondents did not contact Mr. Brown on the adoption and did not follow due process of the law, and for the record; the respondents should show proof of the affidavit that was entered into the court

system giving rights to the adoption. If the court had been law abiding there should have been a stay on the proceedings.

On February 13, 1990 Mr. Brown hired attorney Alfred J. Turk, III, to file for a property settlement. This is proof that he didn't agree or know of any court proceeding about the property settlement; and was trying to finish with the divorce. Mr. Turk filed a notice of Appearance on May 29, 1990; and an oral agreement between both sides to share 50% of all property and Mr. Brown was entitled to all the saving bonds. Attorney R. Hagler agreed to type up the agreement. But, upon receiving the paper version it did not match the oral agreement. The Final Order that Mr. Hagler typed up only reflect what the Respondents had already stolen from Mr. Brown in his absence. Mr. Brown and his attorney (A. Turk) did not sign this order.

This suit is about an illegal adoption in 1990 and all illegal orders to the present.

The Petitioner was never contacted when the Respondents' were going to court. Even the OCSS personnel stated they had meetings and Mr. Brown never responded. Since they were garnishing his paycheck they had a current address for the petitioner and the petitioner had filed for a motion for continuance giving the respondents a current address in September 1989. The Respondents' definitely had a current address; Mr. Brown was in

the military. This is a violation of 42 U.S.C. § 1983 which covers constitutional, civil and adoption rights and also a violation of the Soldiers and Sailors Relief Act of 1940.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress, except that in any action brought against a judicial officer for an act or emission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

1448 et. seq:

Generally speaking under Georgia Law a child born in wedlock cannot be adopted without the consent of each living parent who has not voluntarily surrendered their rights in the child or been adjudicated an unfair parent. Even where the child's parents are divorced or separated at the time of the adoption proceedings, either parent may veto the adoption. Natural father's substantive rights under due process clause were violated in

permitting the adoption. Case: Quilloin v Walcott 435 US. 918.98 S.CT 1477.

An appeal arose from a decision from the District Court in a proceeding upon a petition filed by Mr. Brown for the illegal adoption of his minor daughter. Section 201 of the Soldiers' and Sailors' Civil Relief Act of 1940 provides as follows:

'At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter.

As previously noted, the Act makes mandatory the staying of a proceeding, when application is made on behalf of one in military service, ' * * * unless, in the opinion of the court, the ability of * * * the defendant to conduct his defense is not materially affected by reason of his military service.'

This language made it the duty of the trial judge to inquire, and find, whether or not the ability of the appellant, to conduct his defense was materially affected by reason of his military service. And for the record; show proof of the affidavit that was entered into the court system giving rights to the adoption. Supreme Court, Queens County, New York, JAMAICA SAV. BANK v. BRYAN et al. et al. Jan. 17, 1941. 25 N.Y.S.2d 641.

By the courts refusal to open the sealed file is proof the file exist. Also, upon the "investigating trail" of "discovery" by the petitioner; the Muscogee

County clerk stated that their was no name change; this is also public knowledge (a fact that Mr. Brown verified with state records in Atlanta, GA) talking with the Muscogee county adoptions clerk, "she stated there was a sealed file and that she could not tell him anything about the file, and that he would need a lawyer to help him open the sealed file."

This is also a violation of the Soldiers and Sailors Act of 1940. No one made the effort to contact Mr. Brown on the adoption. The Respondents' were in court over twenty-one (21) times in a period over one year (12 months) from 1989 to 1990 but only had Mr. Brown physically in court twice; and one of those times he was jailed on fraudulently orders and the other time was with his attorney in the Judges chambers. That averages out to twice per month Orders were being signed that affected him without his knowledge. And if the Respondents' had followed the correct procedure for a "legal adoption" there is an even larger paper trail.

In order for the Petitioner Mr. Brown; to obey a court order; first he has to know about the court order.

Under the Soldiers and Sailors Act of 1940: Accordingly, the court will take proof on the matter which may be either in the form of affidavits or testimony, whichever the parties agree upon. After such proof has been furnished, the court will be in a position to determine whether or not a stay should be granted, the length thereof and the terms and conditions to be imposed pursuant to Section 204, of the act 54 U.S. Stat. at Large, Boone v. Lightner, 63 S.Ct. 1223, 87 L.Ed.- , decided June 7, 1943.

'The Soldiers' and Sailors' Civil Relief Act is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation. The discretion that is vested in trial courts to that end is not to be withheld on nice calculations as to whether prejudice may result from absence, or absence result from the service. Absence when one's rights or liabilities are being adjudged is usually prima facie prejudicial.' Royster v. Lederle, 6 Cir., 128 F.2d 197, 199, Ryan v Illinois Dept. of Children & Family Services, C.D. Ill.1997, 963 F,Supp. 1490, reversed 185 F.3d 75.

Mr. Brown found out Orders done between 1985 to 1989; and had all previous orders successfully set aside except for the divorce.
Mr. Brown was never notified of the adoption or property settlement. When Mr. Brown pulled the file in 2007; that is when he became aware of all the court proceedings that had occurred from 1985 to the present. When a violation of U.S. Constitution is involved it takes precedent over statues of limitations. The unsealing of the adoption document per OCGA § 9-3-23 has a twenty (20) year limitation. Mr. Brown has not signed any documents giving up his parental rights, or property and he is within the twenty year time limit. Per § 1983 requirements' for a "conspiracy" between "actors" (Respondents) who were going to court and not contacting Mr. Brown; and with the paperwork signed by Judge Followill, Richard Hagler, OCSS, Rachel Lewis and James Lewis is an example of their "conspiracy". They failed to follow legal requirements of the law and

violated his United States Constitution ARTICLE XIV rights.

Mr. Brown is suing Rachel Lewis, James Lewis, Richard Hagler, and Muscogee County; the employer of Judge Kenneth Followill and the child support services agents [OCSS]. Mr. Brown, never stated he was suing the state of Georgia. The District court Judge, the counsel for the respondents and the Appeals Judges all stated that Mr. Brown was suing the state. Mr. Brown clarified with the Appeal court their "assumed" state issue. As stated in Appeals court the OCSS and the Judge work for a subdivision of the state of Georgia; Muscogee County. Mr. Brown is suing their employer (Muscogee County). Immunity does not extend to political subdivisions of states, such as counties and towns; see the Caption for the Respondents of Muscogee County.

As professional conduct for the Judge, attorney and child support services; they must observe certain codes of ethics and abide by these codes. None of these Respondents followed or upheld ethical codes. Mr. Brown has been deprived due process of the law, and equal protection of the law, under the United States Constitution ARTICLE XIV. 1868.

THE DISTRICT COURT DECISION

Petitioner commenced this action by filing a complaint and a petition to unseal the sealed file on the illegal adoption on November 14, 2008; in the District court. The petitioner complaint alleged five claims.

In Count I, the Petitioner sought relief for an illegal adoption. This illegal adoption was done without notification or consent by the Petitioner.

Georgia Code Section 74-403 (1) set forth the general rule that "no adoption shall be permitted except with written consent of the living parents of a child."

At the time of this illegal adoption the Petitioner was in the military and there should be an affidavit filed for his military duty. "Parents possess a constitutionally protected liberty interest in the companionship and society of their children, and county's interference with such liberty interest without due process of the law is remediable" under 42 USC § 1983. Nicini v. Morra C.A.3 (N.J.) 2000, 212 F.3d 798.

In Count II, Petitioner sought relief for illegal wage garnishments for child support after the child was illegally adopted. At the time of the illegal adoption, the respondent Rachel Lewis was already over paid in child support. The District Court did not acknowledge the exhibits that showed pay vouchers that were entered into the court system to show proof that the garnishment had occurred.

Count III, the Petitioner sought relief for fraud. By not showing proof of notification in a form of an affidavit for either the adoption or all court proceedings; and by the petitioner not giving his consent for the adoption is intentional fraud.

By the Respondents using the court for their "acts" on the illegal adoption and asking for wage garnishments for child support on a child they knew was illegally adopted is intentional fraud. The tolling of the time limitation starts when the petitioner found out in November of 2007.

Count IV, the petitioner sought relief for violation of 42 USC§1983 constitutional rights. The petitioner was deprived of his rights and due process of the law, Nicini v. Morra, C.A.3 (N.J.) 2000, 212 F.3d 798. By not being notified of the adoption is a violation of the XIV amendment rights; Quilloin v Walcott, 435 US. 918.98 S.CT 1477.

Count V, the petitioner sought relief for violation of the Soldiers and Sailors Act of 1940, 50 USCS App. § 501 et seq. Boone v. Lightner, Royster v. Lederle, Stone v. Stone, Walker v. Warner, George v. Capital Traction Co.

This illegal adoption was surreptitiously done by the respondents in 1990 (admitted by respondents in Federal court briefs and in Judge Orders) while the petitioner was active in the military. The respondents had a current address

{motion for continuance by Mr. Brown on 8-30-1989) was entered into the court system; but the respondents intentionally continued not to notify the petitioner of their court proceedings. The court should have issued a stay. Respondents need to show proof of the affidavit.

The petitioner filed a petition to have the sealed file open on the illegal adoption. By the courts refusing to grant the unsealing of the file is proof enough that the sealed file exists for the adoption.

The District court entered a judgment in favor of the defendants. The District Judge and counsel "assumed" that Mr. Brown was suing the state. Mr. Brown, never stated he was suing the state of Georgia. OCSS and the Judge work for a subdivision of the state of Georgia; Muscogee County and he is suing the county.

The Court of Appeals Decision

The United States Court of Appeals for the 11th Circuit citing statue of limitations and Rooker-Feldman doctrine affirmed the District courts judgment. The Appeals Court stated that the petitioner had signed over all property and voluntarily continued to pay child support.

The case is about an illegal adoption, which the courts did not address. The case is about

intentional illegal garnishment after the illegal adoption which the District court did not address.

The petitioner filed a cause of action against Rachel Lewis, James Lewis, Richard Hagler and Muscogee County (their employees; Judge Kenneth Followill and the office of child support services.)

The Appeals Court acknowledged that paperwork was filed while the petitioner was in Germany, which altered the divorce; however, failed to recognize that those court Orders were successfully set aside on July 12, 1989.

The court erred when it refused to unseal the sealed file of the illegal adoption. The petitioner is within the twenty year limitation per Georgia code 9-3-23 to unseal the file. The 11th Circuit Court of Appeal can open the sealed file of the state court.

The court did not address the violation of 42 USC § 1983; that violated the petitioner constitutional rights.

"Parents possess a constitutional protected liberty interest in the companionship and society of their children, and county's interference with such liberty interest without due process of the law is remediable. "

The Appeals Court only addressed false imprisonment.

The illegal adoption was done in 1990 while Mr. Brown was active member of the military. This is a direct violation of the Solider and Sailors Act of 1940. The court did not address why Mr. Brown

was not notified when the court and counsel had the petitioner's current address and did not shown proof of the required affidavit.

The Appeals Court did address the continued illegal garnishment for child support on an illegally adopted child. The Appeals Court stated "Mr. Brown voluntarily paid child support". However his check was garnished through the state of Georgia child services of Muscogee County. Both the District court and Appeals Court did not acknowledge the exhibits or appendix that was entered into the court system that showed proof of the pay vouchers. These pay vouchers showed proof that the garnishment had occurred. This is intentional fraud done by Muscogee County employees.

The petitioner filed (2008) cause of actions when he became aware of all the illegal and fraudulent actions done by the respondents. Therefore the "tolling " of statutes of limitation have not run out for the petitioner and again there is no affidavit showing that Mr. Brown was <u>not</u> in the military filed by the respondents at the time these violations occurred; even though Mr. Brown was active military. This is an intentional violation of Mr. Browns XIV Amendment's rights.

ARGUMENT FOR ALLOWANCE OF WRIT

The decision should be reviewed because the courts erroneously interpret the Petitioners United States Constitution XIV Amendment rights and the Soldiers' and Sailors' Civil Relief Act of 1940. Also the illegal garnishment for child support after the child was illegally adopted. Georgia code §§ Section 74-403 (1) set forth the general rule that "no adoption shall be permitted except with written consent of the living parents of a child.
The denial to open a sealed file under Georgia Code OCGA § 9-3-23 (20 yr limitation for unsealing a file). The petitioner filed within the twenty year time limits.

It should be reviewed because under Georgia law for fraud; OCGA § 51-6-1(fraud accompanied by damage); 51-6-2(fraud and deceit); and 51-7-40 (malicious prosecution). Mr. Brown found out about these actions by the respondents in 2007 and acted on them within the four year time limit.

The petitioner, Mr. Brown did not received personal notice of the hearings. He was neither present nor represented by counsel, and was in the military service. Under provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 .S.C.A.App. § 501 et seq.), relying on Allen v. Allen, 30 Cal.2d 433, 182 Cal.Rptr. 551

"Allen was an appeal from an order denying a motion to vacate an order increasing respondent wife's spousal support. Allen had not received personal notice of the hearing, was neither present nor represented by counsel, and was in the military service. In reversing the denial of appellant husband's motion to vacate, the Supreme Court, in summarizing and applying the pertinent provisions of the act, stated:

> "(Section 520) provides that if there is a default of appearance by the defendant in any proceeding, plaintiff shall file an affidavit showing that the defendant is not in the military service. If such an affidavit cannot be filed, plaintiff must file an affidavit showing that defendant is in the military service or that plaintiff is unable to determine whether or not defendant is in such service. If an affidavit cannot be made showing that defendant is not in the service, the court shall not order the entry of judgment without appointing an attorney to represent defendant and protect his interests."

In the present case, no such affidavits were filed by respondents although the court was informed by (petitioner former attorney of record) that Mr. Brown was in the military service. There is no doubt that the court erred in failing to appoint an attorney to represent the defaulting serviceman.

The court initially determined that Brown contentions concerning the Soldiers' and Sailors' Civil Relief Act as set forth in his points and authorities were not properly before the court, apparently because neither the act nor the Allen case was mentioned by name in his order to show cause. We do not find this controlling as the matter was before the court. The order to show cause contained the factual basis for the relief sought that Brown had received no notice of the hearings on:

July 8, 1985 (Temporary Order);
July 11, 1985 (Amendment to Complaint)
April 17, 1987 (Final Order and Decree)
January 29, 1988 (Amended Final Order and Decree).

All this time he was in the military service stationed in Germany. Even in the above Orders and Complaint it states that Mr. Brown was absent or failed to appear at trial; this is further proof that the respondents did not contact Mr. Brown.

Upon his return state side he returned to court for a division of property and that is when he found out about all the above orders. On July 12, 1989 he had ALL the above orders set aside under the Solider and Sailors Relief Act of 1940.. His supporting points and authorities specifically set forth arguments based upon the Soldiers' and Sailors' Civil Relief Act of 1940, as well as due process grounds. The respondents and the court had been adequately apprised of Brown's reliance upon the act as authority for his

position. Which in turn the orders were successfully set aside by Mr. Brown.

But, the respondents continued their failure to notify Mr. Brown of court dates:

9-13-1989 (Order for Contempt for $17,450; $5,000 for child support and $500 for Richard Hagler attorney fees).

Under Georgia law failure to pay child support can be jailed for contempt. But, Mr. Brown had been garnished by OCSS since 1986 – 1989 and had over paid in child support by the "temporary and final orders" that respondents had fraudulent placed in the court system. However the respondents jailed Mr. Brown for contempt of court for child support after the orders had just been successfully set aside on July 12, 1989. Mr. Brown presented proof of the garnishment to the District court and 11th Circuit Court of Appeals but neither court recognized these facts.

Respondents entered a Complaint on 1-26-90 for contempt in arrearages in the amount of $12,450 as of January 1, 1990 and failing to pay child support payments in the amount of $1,500 per month along with signed paperwork under oath by Rachel J. Brown as a true statement. And RULE NISI and ORDER signed by Judge Kenneth B. Followill on the 26th of January, 1990 and Richard Hagler stating that he mailed to a true copy to Joaquin Brown on the 26th day of January, 1990.

Other orders placed into the court system by the respondents are:

On 2-22-90, an Order for contempt for $14,325 and attorney fee for $250.
On 5-25-1990 a complaint for Contempt.
On 11-20-1990, a Motion to Enforce Agreement and for a Hearing on Attorney fees.
On 12- 4-1990 for the Final Order on child support and division of property.

And during this time frame Mr. Brown daughter was illegally adopted.

On 8-23-2000 the AMENDED FINAL ORDER for child support and property and the Citation for Contempt filed May 29, 1990 to be determined by the court and re-ordered on Dec.4, 1990 and signed 8-23, 2000.

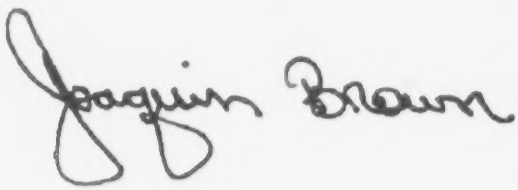
By the respondents refusing to vacate the previous orders that had been successfully set aside on July 12, 1989, is proof of their intentional acts of malice against the Petitioner. Failure to contact Mr. Brown on any court proceedings is a violation of 42 USC § 1983 and Soliders and Sailors Relief Act of 1940.
The respondents violated 42 USC § 1983 which is a violation of the petitioner constitutional rights. Which in turn is a violation of the petitioners United States Constitutional rights of ARTICLE XIV.

All "allegations" are proven in the appendixes that were entered into the 11th Circuit Court of Appeals and the exhibits entered into the District court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Joaquin Brown, pro se
1100 Statler Bend Dr
Pflugerville, TX 78660
512.252.8290

Counsel for Rachel and James Lewis
Thomas M. Flourney, Jr
814 First Ave
Columbus, GA 31901
706.322.3584

Counsel for Richard Haggler
Christine Mast/ Richard Wieseman
4000 Sun Trust Plaza
303 Peach Tree St. N.E.
Atlanta, GA 30308-3243
404.614.7400

Counsel for Judge Kenneth Followill and
Child support services of Muscogee county
Georgia
Matthew Boyer
40 Capitol Square, S.W.
Atlanta, GA 30334-1300
404.657.3982

APPENDICE
A

IN THE UNITED STAES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

JOAQUIN BROWN	*	
Plaintiff,	*	
	*	Case NO. 4 : 08-CV-
150 Rachel Lewis a/k/a (CDL) Rachel Brown; James Lewis; Richard Haggler, attorney; Kenneth Followill, Judge; Superior Court of Muscogee County Child Support Service for Muscogee County, GA.	*	*
Defendants	*	

ORDER

In this action, Plaintiff Joaquin Brown brings various federal and state law claims against his ex-wife, Defendant Rachel Lewis; his ex-wife spouse, James Lewis; his ex-wife's former attorney, Richard Hagler; Judge Kenneth Followill of the Muscogee County, Georgia Superior Court; and the office of Child Support Services for Muscogee County, Georgia (OSCC). Plaintiff's claim stem from a divorce granted in Muscogee County over twenty years ago in 1985. Presently pending before the court

are Plaintiff's motions to unseal various state court documents. (Docs. 2 & 33); Defendant Hagler's motion to dismiss complaint (Docs. 17); the Motion to Dismiss of defendants Followill and OCSS (Docs 18); and Plaintiff's Motion to Amend/Correct his original complaint (Doc. 23). For the following reasons, the Court denies Plaintiff's motion to amend and motions to unseal (Docs. 2,23 & 33); grants the motion to dismiss filed by Defendants Followill and OCSS(Doc. 18); grants Defendant Hagler's Motion to dismiss (Doc. 17).

Neither Defendant Rachel Lewis nor Defendant James Lewis has filed a motion to dismiss. Therefore, several claims against them will remain pending after the entry of this Order. However, the Court has serious concerns as to whether Plaintiff's remaining claims against these Defendants are barred by the applicable statute of limitations. In fact, Plaintiff's present Complaint and proposed amended complaint would not survive a motion to dismiss by these Defendants based upon the expiration of the statue of limitations. Plaintiff is hereby notified that the Court intends to dismiss Plaintiff's claims against these Defendants unless Plaintiff files an amended complaint within fourteen days of this Order that alleges specific facts showing that Plaintiff's claims against these two Defendants are not barred by statute of limitations.

FACTUAL ALLEGATIONS

Plaintiff, who is proceeding pro se, alleges the following, which must be accepted as true for purposes of the pending motions to dismiss. Day v. Taylor, 400 F.3d 1272,1275 (11th Cir. 2005). In April 1985, Defendant Rachel Lewis (Ms Lewis) filed a complaint for divorce in the Superior Court of Muscogee County, seeking child support and a division of property. Plaintiff requested a trial by jury and sought a portion of the couple's marital property. In June 1985, Defendant Kenneth Followill (Judge Followill) granted Ms. Lewis a divorce and reserved all issues relating to alimony, attorney's fee, child support and division of property for a jury trial or further determination by the court. Plaintiff, who was serving in the armed forces at the time, had orders to attend the advanced non-commissioned officer course in Fort Sill Ok.; after which he would be stationed in Germany. Plaintiff agreed that his children would remain in the United States with Ms Lewis and that he would continue to pay the mortgage on the martial home as child support. Plaintiff further agreed that the parties would complete the division of property and finalize child support when he returned from Germany. (Compl. Para 4, at 2-3.)

Plaintiff alleges that while he was stationed overseas, Hagler filed an amendment to Ms Lewis's original complaint for divorce alleging that Plaintiff committed adultery and threatened Ms Lewis. Plaintiff further alleges that this

amendment was made without his knowledge and while he was not represented by counsel. (Compl. Para 5, at 4.) Subsequent to this amendment, Ms Lewis "was awarded everything" in the divorce and the related court order stated that Plaintiff failed to appear in court. (Id.) At some later date, Plaintiff's wages were garnished, ostensibly for failure to pay child support based on another court order about which Plaintiff contends he knew nothing. (Id. at 4-5)

When Plaintiff returned from overseas, he filed a petition to set aside the court orders that had been entered in his absence. On July 12, 1989, the court set aside all orders except the temporary order entered on July 8, 1985. (Compl. Para 5, at 5.)

On August 24, 1989, Ms Lewis filed a contempt citation against Plaintiff. Exactly what transpired next is unclear from the Complaint, but Plaintiff was ultimately incarcerated for being $33,375 in arrears on his child support payments. Plaintiff spent nine days in jail and paid $5,500 before he was released. (Id.)

In 1990, defendant James Lewis (Mr. Lewis) adopted the minor daughter of Plaintiff and Ms Lewis. Plaintiff contends that the adoption was illegal because he was never contacted about it. In addition, despite his daughter's adoption, Plaintiff continued to pay child support for her until she turned 21 years of age. Plaintiff further contends that Ms Lewis and Hagler continued to file motions that Plaintiff either did not know about or did not agree with and that Ms Lewis disposed of marital

property by way of illegal court orders signed by Hagler and Judge Followill. (compl para 5, at 6)

Plaintiff contends that the actions of Defendants give rise to federal claims for violations of the Service Members Civil Relief Act("SCRA"), 50 App. U.S.C. § 501 et seq., [1] and 42 U.S.C. § 1983. Plaintiff also raises state law claims for violations of the "Civil Practice and Remedies Code 3331.08 [02]," illegal adoption, illegal garnishment of child support, fraud, and malpractice. (compl. Para 6 (brackets in original).) Plaintiff seeks compensatory and punitive dames in the amount of ten million dollars.[2] (Id. para 7.)

DISCUSSION

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[1] Plaintiff actually cites to the "Solider' and Sailors' Civil Relief Act of 1940." (compl. Para 2.) On December 19,2003, these statutes were amended and renamed the Servicemembers Civil Relief Act, and these amendments apply to any case that is not final before December 19, 2003. see Pub.L. No. 108-189, § 3, 117 Stat. 2835, 2866 (to be codified at 50 app. U.S.C § 501 et.seq). The SCRA provision at issue in this case appears substantially similar to the provision in the pre-amendment version of the statute.

[2] Plaintiff has also filed motions entitled "Intervenor's Petition in Intervention & Motion to Unseal Records" and "Motion to Unseal Court Records." (Docs. 2 & 33.) Plaintiff's motions are, in effect, a petition for a writ of mandamus in which this court would be required to order a state court to unseal records to the public. This Court has no authority to grant Plaintiff's request. See, e.g. Parker v Phillips, 27 F App' x 491, 494 (6th Cir. 2001) ("Federal courts . . . have no authority to issue a writ of mandamus directing a state court for its judicial official officers in the performance of their duties.") In addition, to the extent Plaintiff requests a hearing on this issue, the court finds in its discretion that such hearing is unnecessary. See M.D. Ga. R. 7.5. Plaintiff's motions are therefore denied.

I. Motion to Amend Standard

The Court must first address Plaintiff's motion to amend his Complaint to add the Georgia statutes relevant to his state law causes of action. Federal Rule of Civil Procedure 15 (a)(1) provides that " [a] party may amend its pleading once as a matter of course...before being served with a responsive pleading[.]" At any time thereafter, "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a) (2). A "court should freely give leave when justice so requires." Id. However, a court may deny leave to amend "(1) where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile." Bryant v Dupree, 252 F.3d 1161, 1163 (11th cir. 2001) (per curiam); see also Fla. Evergreen Foliage v. E.I. DuPont De Nemours & Co., 470 F.3d 1036, 1041 (11th cir. 2006) (per curiam).

The Eleventh Circuit has found that "`denial of leave to amend is justified by futility when the complaint as amended is still subject to dismissal.'" Hall v United ins. Co. of Am., 367 F.3d 1255,1263 (11th cir. 2004) (quoting Burger King Corp. v weaver, 169 F.3d 1310,1320 (11th cir. 1999)).

In determining whether a motion to amend is futile, the court examines whether the proposed amended complaint is "subject to dismissal" under

Federal Rule of Civil Procedure 12(b) (6). Under that standard, the curt determines whether, "construing the [proposed] complaint in the light most favorable to the plaintiff and accepting as true all facts which the plaintiff alleges, " the proposed complaint fails to state a claim upon which relief may be granted. Day, 400 F.3d at 1275. The proposed amended complaint must include sufficient factual allegations "' to raise a right to relief above the speculative level'" and "`to raise a reasonable expectation that discovery will reveal evidence of '" the plaintiff's claim or claims. Watt v Fla. Int'l Univ., 495 F.3d 1289,1295,1296 (11th cir.2007) (quoting Bell Atl. Corp. v Twombly, 550 U.S. 544,555,556, (2007)).

For the following reasons, the court finds that even if Plaintiff were permitted to amend his Complaint in the manner he request, it would still be subject to dismissal. Thus, Plaintiff's motion to amend is denied as futile, and Defendants' motions to dismiss are granted.

II. Plaintiff's Federal Law Claim

The court first addresses the two Federal law claims asserted by Plaintiff's Complaint and his proposed amendments. [3] Plaintiff contends that he has causes of action arising under the SCRA and 42 U.S.C § 1983. Plaintiff's federal law claims are due to be dismissed in their entirety.

A. Claims Under the SCRA

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[3] Plaintiff's proposed amendments do not affect his federal law claims.

The SCRA "was enacted to protect active military personnel from having their legal remedies expire during that time in which they are unable to assert them due to the unique demands placed on personnel by virtue of their military service." McMurtry v City of Largo, 837 F. Supp. 1155, 1157 (M.D. Fla. 1993). To this end, the law provides:

> If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon the judgment for the purpose of allowing the servicemember to defend the action if it appears that—
>
> (A) the servicemember was materially affected by reason of that military service in making a defense to the action; and
>
> (B) the servicemember has a meritorious or legal defense to the action or some part of it.

50 App. U.S.C. § 521 (g) (1). Plaintiff contends that various orders related to his divorce, alimony and child support payments, as well as the adoption of his child, violate the SCRA because they were entered without his knowledge and while he was on active military duty. (Compl. Para 5; pl.'s Br. in Opp'n to Mot. To Dismiss 1 {hereinafter Pl.'s Resp.].) As discussed in more detail below, Plaintiff's claims are barred by the Rooker-Feldman doctrine. Furthermore, even if these claims were not barred by Rooker-Feldman

doctrine, they must be dismissed because they can only be brought in the court in which the judgments were entered. [4]

"The Rooker-Feldman doctrine places limits on the subject matter jurisdiction of federal district courts and courts of appeal over certain matters related to previous state court litigations." Goodman ex re. Goodman v. Sipos, 259 F.3d 1327,1332,(11th cir. 2001). The foundation of the doctrine is that "`federal courts, other than the United States Supreme Court, have no authority to review the final judgments of state court.'" Id. (quoting Siegel v LePore, 234 F.3d 1163,1172 (11th cir. 2000) (en banc). The United States Supreme court has confined the Rooker-Feldman doctrine "to causes... brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those arguments." Exxon-Mobil Corp. v Saudi Basic Indus. Corp., 544 U.S. 280,284 (2005).

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[4] It is also unclear whether the SCRA even provides a private right of action for damages under the circumstances presented by this case. See McMurtry, 837 F.Supp. at 1157 (nothing that there is no private cause of action expressly provided by the SCRA; the law "is merely intended to secure [a servicemember's] legal rights until he may return" (internal quotation marks omitted); see also Davidson v Gen. Fin. Corp., 295 F. Supp. 878, 881 (N.D. Ga 1968) (holding that the former version of the SCRA 'nowhere allows a damage action"). Even if the SCRA did provide a private right of action for damages, the Rooker-Feldman doctrine would still bar Plaintiff's claim in this case because in order to find in Plaintiff's favor, the court would have to find that Plaintiff suffered an injury as a result of a state-court judgment and then review and reject that judgment. See Exxon-Mobil Corp. v Saudi Basic Indus. Corp., 544 U.S. 280, 290-92 (2005)

The Eleventh Circuit recently adopted this language as the test for determining whether a state-court judgment falls within the bounds of the Rooker-Feldman doctrine. Nicholson v Shafe, 558 F.3d 1266,1274 (11th cir. 2009).

In this case, Plaintiff appears to challenge state court orders that he contends violated the SCRA because they were entered without his knowledge while he was serving on active duty in the military. There appears to be no reason why Plaintiff could not have challenged these orders in the superior court. In fact, Plaintiff did file a petition to set aside all the superior court's order that had been entered while Plaintiff was overseas on military duty, and he was largely successful in obtaining this relief. (compl. Para 5 at 5 [on July 12, 1989 an order to was done to set aside all amendments except the temporary order July 8, 1985."]) A federal court challenge to these orders is precisely what is prohibited by the Rooker-Feldman doctrine: a federal case brought by a state-court loser complaining of an injury caused by a state-court judgment rendered before this action commenced and seeking district court review and rejections of the state-court judgment. See Exxon-Mobil, 544 U.S. at 284. The court lacks jurisdiction to reexamine those claims already raised by Plaintiff in the superior court.

Plaintiff also challenges the superior court orders related to his daughter's alleged adoption. However, the Rook-Feldman doctrine both "applies to claims actually raised in state court and to claims that were not raised in state court but are

'inextricably intertwined' with the state court judgment, so long as the plaintiff had a reasonable opportunity to raise the claim in state proceedings." Slizyk v Smilack (in re Slizyk), 278 F.App'x 946, 948 (11th cir. 2008) (per curiam). Although the Complaint is unclear with respect to whether Plaintiff ever challenged the superior court's orders related to the adoption, a superior court order terminating parental rights and granting an adoption is certainly reviewable in the Georgia court system. See, e.g., Johnson v Taylor, 292 Ga. App. 354,665 S.E.2d 49,50 (2008) (natural parent's appeal of an order terminating parental rights based on an adoption petition.) Because Plaintiff could have challenged the superior court's order in the superior court, Plaintiff's adoption-related SCRA claim is also barred by Rooker-Feldman.[5]

Furthermore, the plain language of the SCRA confirms that under the circumstances presented by this case, an affected servicemember should seek relief in the court in which the judgment was entered. 50 App. U.S.C. § 521 (g) (1) ("[T]he court entering the judgment shall .... Reopen the judgment for the purpose of allowing

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[5] Although it is unclear from the Complaint which claims Plaintiff actually raised before the superior court, any claims Plaintiff had related to his divorce also could have been raised in superior court. See O.C.G.A. § 19-5-1 (authorizing superior court to grant divorces); see also Slizyk, 278 F.App'x at 948 (affirming district court's decision not to review a challenge to a portion of a divorce decree because it was inextricably intertwined with the state court judgment and plaintiff could have challenged the decree in state court.) These claims would likewise be barred by the Rooker-Feldman doctrine.

the servicemember to defined the action.') Courts have held that a plaintiff's "exclusive" remedy under the SCRA is to petition the court entering the judgment to reopen the judgment. Cf. Davidson v Gen. Fin. Corp., 295 F. Supp. 878m 880 (N.D. Ga. 1968) (applying former version of SCRA.) The SCRA simply "does not empower this court to collaterally review, vacate or impede the decisions of a state court." Shatswell v Shatswell, 758 F.Supp. 662,663 (D. Kan. 1991) (holding "[j]udgment made in violation of the {SCRA} are subject to attack only in the courts which rendered the judgment"); see also Selvera v Selvera, No. civ. A. SA01CA1098EP, 2003 WL 721449, at *3 (W.D. Tex. Jan. 31, 2003) (holding that "`[n]o right or jurisdiction was vested by the {SCRA} in federal district courts to vacate or impede an order or judgment of a state court or to interfere with the exercise by a state court of the jurisdiction conferred on it by the Act'" (quoting Redding v Ninth Fed. Sav. & Loan Ass'n. 55 F. Supp. 361, 370 (S.D.N.Y 1944)) (alterations in original).

In sum, the court declines to express an opinion regarding whether Plaintiff may be able to seek relief under the SCRA in the superior court. The Court finds, however, that it lacks jurisdiction to revisit the superior court's orders in the present action. The court therefore dismisses Plaintiff's SCRA claims.

B. Claims Under 42 U.S.C. § 1983

Plaintiff also asserts that Defendants violated his federally protected rights and

> are liable under 42 U.S.C. § 1983. Under this provision,
>
> [e]very person who, under color of any statue, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit inequity, or other proper proceeding for redress . . . .

Plaintiff asserts that on September 7, 1989, he was jailed for in arrears on child support. Plaintiff contends that "[t]he Courts would allow [him] out of jail only if he signed documents that agreed to all previous court procedures." (Compl. Para 5, at 5.) Plaintiff then alleges that he "'refused to sign the documents and stayed in jail. This is false imprisonment." (Id.) Plaintiff's § 1983 claims are based on these allegations. (see Compl. Para 6.) Even though the Eleventh Circuit recognizes causes of action for false arrest and malicious prosecution, see, e.g., Skop v City of Atlanta, 485 F.3d 1130,1136 (11th cir. 2007), Defendants' motions to dismiss are granted for the following reasons. [6]

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[6] To the extent Plaintiff attempts to recast his SCRA claim as a § 1983 violation, this attempt fails. See, e.g. Auston v N.Carolina, No.96-1158, 1997 WL 312285, at *2 (7th Cir. June 5, 1997) (holding that the plaintiff's § 1983 and SCRA claims were barred by Rooker-Feldman doctrine because "it

1. Judge Followill

Plaintiff contends that Judge Followill's alleged § 1983 liability for false imprisonment and malicious prosecution stems from the fact that "Judge Followill signed all orders including the contempt orders on (Plaintiff)." (Pl.'s resp. 2.) It is well-established that "judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and alleged to have been done maliciously or corruptly." Stump v Sparkman, 435 U.S. 349, 355-356 (1978) (internal quotation marks omitted). "The Supreme Court has set forth a two-part test for determining when a judge is entitled to immunity from money damages liability when sued under section 1983." Simmons v Conger, 86 F.3d 1080,1084, (11th cirs. 1996). First, the court must determine "whether the judge dealt with the plaintiff in a judicial capacity." Id. Second, the court must determine "whether the judge acted in the clear absence of all jurisdiction." Id. at 1085 (internal quotation marks omitted); see also Stump, 435, U.S. at 356 ("[T]he necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him.") Judge Followill was acting in his judicial capacity

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is settled that a plaintiff may not seek reversal of a state court judgment simply by casting his complaint in the form of a civil rights action") (internal quotation marks omitted)).

when he found Plaintiff in contempt for failing to pay court-ordered child support payments. The conduct that Plaintiff alleges was illegal "was a normal judicial function in a case pending before a judge, occurred in the judge's courtroom, and arose from dealings with the judge in his official capacity." Rolleston v Eldridge, 848 F.2d 163,164 (11th cir. 1988); see also Stump, 435 U.S. at 362 (holding that in determining whether a judge's action was "judicial," a court should examine "the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity"). Judge Followill was also acting within his jurisdiction. A superior court judge in the state of Georgia has jurisdiction to jail or obligor for contempt for failure to pay court-ordered child support. See O.C.G.A § 19-6-28 (a) ([T]he court . . . shall have the power to punish the respondent who violates any order of the court to the same extent as is provided by law for contempt of the court in any other action or proceeding cognizable by the court."); see also, Ensley v Ensley, 239 Ga. 860, 863 238 S.E.2d 920, 923 (1977) ("A father who willfully refuses to pay child support which he is able to pay and which is required by an order of court may be found guilty of either civil or criminal contempt of court, or both, and dealt with as provided by law.") Because Judge Followill acted in a judicial capacity and within the bounds of his jurisdiction when he held Plaintiff in contempt for failure to pay child

support, Judge Followill is immune from suit on Plaintiff's § 1983 claim.

2. OCSS

Plaintiff also seeks to hold OCSS responsible for false arrest and malicious prosecution under § 1983, although it is unclear from the Complaint how OCSS's actions contributed to these alleged violations. Secton 1983 provides a cause of action against a "person" who violates another's Federally-protected rights. A state agency is not a "person" capable of being sued for damages under § 1983. See, e.g., Edwards v Wallace Cmty. Coll., 49 F 3d. 1517, 1524 (11th cir. 1995). OCSS is a state agency. See O.C.G.A. § 19-6-15 (a) (6.1) (noting that "{c}hild support services" refers to "the agency within the [Georgia] Department of Human Resources which provides and administers child support services'). Because OCSS is not a "person" subject to suit under § 1983, OCSS's motion to dismiss Plaintiff's § 1983 claim is granted.

3. Defendant Hagler

Plaintiff next seeks to hold Hagler liable for false arrest and malicious prosecution. Hagler argues that Plaintiff has failed to state a claim for a § 1983 violation because Plaintiff has failed to show a deprivation of a federal right by a person acting under color of state law. "A successful section 1983 action requires a showing that the conduct complained of (1) was committed by a person acting under color of state law and (2) deprived the complainant of rights, privileges, or immunities secured by the constitution . . . ." Harvey v Harvey, 949 F.2d 1127,1130 (11th cir.

1992). Although Hagler is a private citizen, he may be found to be acting "under color of state law", for § 1983 purposes if Plaintiff demonstrates Hagler was "a willful participant in joint action with the state or it's agents." Id. at 1133 (internal) quotation marks omitted.

The court cannot ascertain from Plaintiff's Complaint and proposed amendments how Hagler violated Plaintiff's constitutional rights. Zealous advocacy by an attorney does not rise to the level of a constitutional violation. Moreover, it is clear under the facts alleged by Plaintiff that Hagler did not conspire to violate Plaintiff's constitutional rights, and thus there is no basis for finding Hagler, a private attorney, to be a state actor for purposes of § 1983. When a plaintiff attempts to prove state action by means of establishing a conspiracy between a state actor and a private party, the plaintiff must at least refer to material facts that describe the relationship or nature of the conspiracy between the state actor and the private person. Phillips v Mashburn, 746 F.2d 782,785 (11th cir. 1984) (per curiam). These material facts must demonstrate "contacts between the [parties] that could prove private [Plaintiff's] rights." Harvey, 949 F.2d at 1133. "The naked assertion of a conspiracy between a state [actor] and private defendants without supporting operative facts provides an insufficient state action nexus for a section 1983 action." Phillips, 746 F.2d at 785; se also Eubank v Leslie, 210 F. App'x 837, 842 (11th cir. 2006) (per curiam) ("To establish a prima facie case of conspiracy, the plaintiff must allege, among

other things, that the defendants 'reached an understanding to violate [his] rights.'" (alteration in original) (quoting Rowe v City of Fort Lauderdale, 279 F.3d 1272,1283 (11th cir. 2002); Hansel v Al Gone Towing Co., 132 F App'x 308,309 (11th cir. 2005) (per curiam) ("A plaintiff claiming a conspiracy under § 1983 must make particularized allegations that a conspiracy exists. Vage and conclusory allegations suggesting a § 1983 conspiracy are insufficient to withstand a motion to dismiss." (internal citation omitted)) Even if the Complaint and the proposed amendments could be construed to allege action by either Hagler or a state actor that ultimately caused a constitutional violation, it fails to sufficiently allege "some agreement" between Hagler and a state actor to violate Plaintiff's constitutional rights. Because Plaintiff's Complaint, even as amended, fails to state a claim against Hagler for a § 1983 violation, the court denies Plaintiff's motion to amend and grants Defendant Hagler's motion to dismiss Plaintiff's § 1983 claims for false arrest and malicious prosecution.

III Plaintiff's State Law Claims

Plaintiff alleges that he is a citizen of Texas and that Defendants are citizens of Georgia, and he further alleges that the amount in controversy exceeds $75,000. [7] (compl. Para 2.) These

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[7] Plaintiff seeks ten million dollars in damages. In addition, Plaintiff avers that he was jailed for being in arrears of child support in the amount of $33,375, and he paid $5,500 to be released from jail. (Compl. Para 5, at 5.) The court cannot say "to a legal certainty that the claim is really for less than the jurisdictional amount" as would be

allegations are sufficient to confer on this Court diversity jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1332 (a). The Court therefore turns to the causes of action Plaintiff asserts under state law: (1) false arrest, malicious prosecution, and /or false imprisonment; (2) illegal adoption; (3) illegal wage garnishment; (4) fraud; and (5) malpractice. "In the case founded on diversity jurisdiction, the district court must apply the forum state's choice of law rules." Fedrated Rural Elec. Exh. v R.D Moddy & Assocs. ,Inc., 468 F3d. 1322,1325 (11th cir. 2006) (per curiam). Georgia is the forum state, and under Georgia law, "tort cases are governed by the substantive law of the state where the tort was committed" Id. (internal quotation marks omitted). It appears that no party disputes that the alleged torts were committed in the stat of Georgia; thus Georgia law applies.

Although Plaintiff's original Complaint asserted that Texas Law governed this case, Plaintiff's proposed amendments seek to correct this deficiency by identifying the Georgia statutes that correspond to his causes of action. Even assuming that the Court permitted these amendments, however, Plaintiff;s Complaint would still be subject to dismissal for the following reasons.

A. Claims Barred by the Rooker-Feldman Doctrine

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necessary to justify dismissal. See, e.g. Federated Mut. Ins. Co. v McKinnon Motors, LLC, 329 F.3d 805,807 (11th Cir. 2003).

The Court first finds that it lacks jurisdiction Over Plaintiff's claims against Defendants Hagler, Followill and OCSS for illegal adoption and illegal wage garnishment pursuant to the Rooker- Felman doctrine. As discussed more thoroughly in section II.A of this Order, the doctrine "provides that lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments." Nicholson, 558 F.3d at 1269 (internal quotation marks omitted). Plaintiff's claims for illegal adoption and wage garnishment are simply challenges to orders entered by the superior court. Even if Plaintiff has failed to challenge these orders until now, it is clear that Plaintiff could have challenged them in a Georgia state court but failed to do so. See, eg., O.C.G.A. § 18-465 ("When garnishment proceedings are based upon a judgment, the defendant, by traverse of the plaintiff's affidavit, may challenge the existence of the judgment or the amount claimed due thereon.") Johnson, 292 Ga. App. At 354, 665 S.E. 2d at 50 (challenge to termination of parental rights based on adoption petition). The court therefore lacks jurisdiction to review these claims in this proceeding.

B. Claims Barred by Judicial Immunity

The court next finds that Judge Followill is absolutely immune from suit on Plaintiff's state law false arrest, malicious prosecution, fraud, and malpractice claims. Georgia courts "have consistently held that judges are immune from

liability in civil actions for acts performed in their judicial capacity." Smith v Hancock, 150 Ga. App. 80, 256 S.E.2d. 627,628 (1979). "[T]his immunity applies even when the judge is accused of acting maliciously and corruptly . . . ." Id. at 81,256 S.E.2d at 628 (affirming judge-defendant's motion to dismiss on the basis of judicial immunity even though the plaintiff's complaint alleged "improper conduct" on the part of the judge); see also Stump, 435 U.S. at 356. Even if Plaintiff's claim could be construed to state an otherwise cognizable claim against Judge Followill, Judge Followill is immune from suit. Accordingly, Judge Followill's motion to dismiss is granted with respect to Plaintiff's state law claims.

C. Claims Barred by Sovereign Immunity

The court next finds that principles of sovereign immunity bar Plaintiff's claim against OCSS. The Georgia Constitution "insulates the state and its department and agencies from liability except to the extent that the legislature enacts a specific waiver." Southerland v Ga. Dep't of Corr., 293 Ga. App. 56, 57,666 S.E. 2d 383,384-85 (2008). The Georgia Tort Claims Act, ("GTCA"), O.C.G.A § 50-21-20, et seq., sets forth the state's limited waiver of sovereign immunity for tort claims. Id. 666 S.E. 2d at 385. Because "[t]he GTCA represents a waiver of the State's sovereign immunity, limited in extent and manner [,] . . . its provisions should be narrowly construed." Doe v Ga. Dep't of Corr., 268 Ga. 582,583,492 S.E.d 516,517 (1977)

(citations omitted). The party seeking to take advantage of the GTCA's limited and exclusive waiver of sovereign immunity bears the burden of establishing waiver; if waiver is not established, the court lacks subject-matter jurisdiction over the claims asserted. See Southerland, 293 Ga. App. At 57,666,S.E.d at 384. The GTCA provides a number of limitations on a plaintiff's ability to sue a state agency for a tort. For example, tort actions against government entities must "be brought in the state or superior court of the county of the county wherein the loss occurred." O.C.G.A. § 50-21-28, and the Act does not waive the state's sovereign immunity with respect to claims brought in federal court, O.C.G.A § 50-21-23(b). The GTCA also requires a plaintiff with a potential tort claim against the state to file an ante litem notice that coplies with statutory requirements. Cummings v Ga. Dep't of Juvenile Justice, 282 Ga. 822, 823, 653 S.E.2d 729,731 (2007). Plaintiff does not allege that he made any effort to comply with the provisions of the GTCA. Plaintiff's tort claims for false arrest, malicious prosecution, fraud and malpractice were not brought in the state or superior court of the county where Plaintiff's loss occurred. Furthermore, Plaintiff failed to comply with the procedural requirements for bringing a GTCA claim. See, e.g., Cummings, 282 Ga. At 824,653 S.E.2d at 731 (noting that "[c]ompliance with the ante litem notice provisions is a condition precedent to the

claimant's right to file suit against the state"); Williams v Ga. Dep't of Human Res., 272 Ga. 624,532 S.E.2d 401,402 (2002) (holding that even 'substantial compliance with the notice provisions is inadequate"). Plaintiff has failed to meet his burden of establishing the limited waiver of sovereign immunity provided by the GTCA. See, e.g. , id. at 625-26, 532 S.E.2d at 403 (noting that the Georgia Court of Appeals "has dismissed claims when the plaintiff did not give notice to the state, failed to give notice within 12 months of the accident, and failed to send notice to the Department of Administrative Services and the state agency responsible for the loss"). Accordingly, OCSS, a state agency, is immune from suit on Plaintiff's state-law tort claims.

D. Claims against Defendant Hagler

As a private citizen, Hagler does not enjoy any potential immunity from suit on Plaintiff's remaining state law claims for false arrest, malicious prosecution, false imprisonment, fraud or malpractice. Instead, Haler seeks to dismiss Plaintiff's state law claims against him on the basis that Plaintiff's Complaint, even as amended, demonstrates that the applicable statutes of limitation have expired.

When statute of limitations questions arise in federal court, the court "must look to state law to determine, first, what statute of limitations is applicable, and second, whether that limitations period is tolled." Duke v Sitherman, 32 F.3d 535,537 (11th cir. 1994) (per curiam). Under

Georgia law, Plaintiff "bears the burden of establishing the existence of any facts which would toll the statute of limitations." AAA Truck Sales, Inc. v Mershon Tractor Co., 239 Ga. App. 469, 479,521 S.E.d 403,405 (1999). In contrast, federal law controls whether the allegations supporting the claim's accrual date are sufficient for purposes of a defendant's motion to dismiss. Cf., e.g. Bernard Schoninger Shopping Ctrs., Ltd. V J.P.S. Elastomerics, Corp., 102 F.3d 1173,1177 (11th cir. 1997) (finding that state "law determines when the applicable statute of limitations began to run in this case, but federal law determines whether the evidence supporting this starting date suffices to entitle the defendant to summary judgment"). Dismissal of a claim "on statute of limitations grounds is appropriate only if it is apparent from the face of the Complaint that the claim is time-barred." Tello v Dean Witter Reynolds, Inc., 410 F.3d 1275, 1288 (11th cir. 2005) (internal quotation marks omitted.)

Given the foregoing standard, the court finds that from the face of Plaintiff's Complaint and proposed amendments, Plaintiff's remaining claims against Hagler are untimely. Furthermore, despite Hagler's challenge to the timeliness of Plaintiff's state law claims, Plaintiff has failed to meet his burden of alleging any facts that would warrant tolling the applicable statutes of limitations. Accordingly, Plaintiff's Complaint, even as amended, would be subject to dismissal, and the court therefore denies Plaintiff's motion to amend and grants Hagler's motion to dismiss. The Court

will more specifically discuss each of Plaintiff's claims in turn.

1. False Arrest and Malicious Prosecution

Georgia law recognizes three tort causes of action based on the allegedly illegal detention of a person:

> (1) false imprisonment, which is 'unlawful' detention without judicial process, or without the involvement of a judge at any point (O.C.G.A § 51-7-20) ; (2) false or malicious arrest, which is detention 'under process of law' (O.C.G.A § 51-7-1); and (3) malicious prosecution, which is detention with judicial process followed by prosecution (O.C.G.A § 51-7-40).

Ferrell v Midula, 295 Ga. App. 326, 329, 672 S.E.2d 7,10 (2008). Plaintiff mentions all three causes of action in his Complaint. Each of these claims, however, has a two-year statute of limitations. See, e.g. McClendon v Kroger Co., 279 Ga. App. 417, 631 S.E.2d 461,(2006) (two year statute of limitations for malicious prosecution).

Even in the face of Hagler's challenge to the timeliness of the false arrest, malicious prosecution claims, and/or false imprisonment claims. Plaintiff offers no explanation why he chose to file his claims nearly twenty years after the arrest forming the basis for them. Indeed, the Court cannot discern from the Complaint or the proposed amendments which cause of action is most appropriate or when this cause of action even accrued. See e.g. Reese, 247 Ga. App. At 703, 545 S.E.2d at 98 (noting that

the two-year statute of limitations for a malicious prosecution action could only begin to run when the underlying prosecution was terminated in the plaintiff's favor). The Court thus finds that it is clear from the face of his Complaint and its proposed amendments that Plaintiff's false arrest and malicious prosecutions claims are time-barred.

2. Legal Malpractice

Plaintiff next alleges a claim for "malpractice." A malpractice action is simply a professional negligence action. See e.g. McMann v Mockler, 233 Ga. App. 279, 280, 503 S.E.2d 894, 896 (1998). The only "professional" subject to suit in this case is Hagler; thus, the only potential "malpractice" claim is one for legal malpractice. In order to state a claim for legal malpractice, a plaintiff must establish three elements: "(1) employment of the defendant attorney, (2) failure of the attorney to exercise ordinary care, skill and diligence, and (3) that such negligence was the proximate cause of damage to the plaintiff." Duke Galish, L.L.C v Arnall Golden Gregory, L.L.P, 288 Ga App. 75, 76 n.3, 653 S.E.2d 791,793 n.3 (2007) (internal quotation marks omitted). "The statute of limitations for legal malpractice actions is four years and runs from the date of the alleged incident or malpractice." Villani v Hughes, 279 Ga. App. 618,619,631 S.E.2d 709, 711 (2006) (internal quotation marks omitted).

Plaintiff again fails to allege a date certain when any incident of legal malpractice occurred. In fact, Plaintiff never alleges that a lawyer-client relationship existed between himself and Hagler,

and the existence of such a relationship is necessary element of a malpractice cause of action. See e.g. McMann, 233 Ga. App. At 282, 503, S.E.2d at 897 ("the tort of professional megligence, or malpractice, arise from the relationship (attorney and client) created by contract.") The most recent date even mentioned in Plaintiff's Complaint in late 2008. Again, from the face of Plaintiff's Complaint and his proposed amendments, it is clear to the Court that Plaintiff's malpractice claim is time-barred.

3. Fraud

Plaintiff also alleges a claim for fraud, apparently based on his allegation that Ms Lewis "continued to harass [him] by placing fraudulent paperwork into the court system with the help of her attorney Hagler for child support on an adopted child and Judge had signed and seal[ed] the adoption papers." [8] (Compl. Para 5, at 6.) Plaintiff further alleges that as recently as the 200, Ms. Lewis filed allegedly fraudulent motions and fraudulently disposed of marital property. (Id..)

Georgia law provides that "[f[raud, accompanied by damage to the party defrauded, always gives a right of action to the injured party." O.C.G.A § 51-6-1. the tort of traud requires proof of five elements: "(1) a misrepresentation by the

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[8] Georgia law does provide a twenty-year statute of limitations for "[a]ctions upon bonds or other instruments under seal." O.C.G.A. § 9-3-23. There is no indication that the "sealed "adoption records referred to by Plaintiff are the type of "instruments under seal" governed by this statute, as suggested by Plaintiff.

defendant, (2) intent to deceive, (3) intent to induce the plaintiff to act or refrain from acting, (4) justifiable reliance on the misrepresentation, and (5) damage." Johnson v Univ. Health Svcs. , Inc. , 161 F.3d 1334, 1341 (11th cir. 1998) (applying Georgia law). Under Georgia law, fraud claims must be brought within four years. See Hamburger v PFM Capital Mgmt., Inc., 286 Ga. App. 382, 387, 649 S.E.2d 779, 784 (2007); see also O.C.G.A § 9-3-31. Additionally, under Georgia law, "[i]f the defendant or those under whom he claims are guilty of a fraud by which the plaintiff has been debarred or deterred from bringing an action, the period of limitation shall run only from the time of the plaintiff's discovery of the fraud." O.C.G.A. § 9-3-96. The Georgia Supreme Court recognizes a cause of action in tort damages when a defendant makes a willful misrepresentation to a court and the court acts upon the misrepresentation to the detriment of the plaintiff. See, e.g., Butler v Turner, 274 Ga. 566, 569-70, 555 S.E.2d 427, 431 (2001) (holding that mother could sue father for fraud based upon father's alleged misrepresentation of his finances in a child support action.) Plaintiff's Complaint and his proposed amendments can be construed to state a similar cause of action. Plaintiff's Complaint and his proposed amendments can be construed to state a similar cause of action. Again, however, Plaintiff filed his claim at least eight years after the last allegedly fraudulent act described in his Complaint; he therefore bears the burden of alleging facts sufficient to show that the statute of

limitations should be tolled. See, e.g. , AAA Truck Sales, Inc. , 239 Ga. App. At 470, 521 S.E. 2d at 405. Given the number of allegedly fraudulent court proceedings and orders, defendants, and claims involved in this lawsuit the Court cannot glean from the face of Plaintiff's Complaint or the proposed amendments any factual basis for showing that the statute of limitations should be tolled due to fraud. In sum, Plaintiff's Complaint, even as amended, reveals that Plaintiff's state law causes of action against Defendant Hagler are time-barred. Furthermore, neither Plaintiff's Complaint nor his proposed amendments contain a sufficient factual basis for tolling the relevant statutes of limitations. [9] Thus, even as amended,

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[9] Even after being notified that his claims were potentially untimely, Plaintiff (1) failed to seek leave to amend his complaint to allege facts sufficient to warrant tolling; (2) failed to reply to Hagler's response to Plaintiff motion to amend in which Hagler argued that Plaintiff's claims, even as amended to assert claims under Georgia law, were time-barred; and (3) failed to propound any specific basis for tolling the statute of limitations in his response to defendant's motion to dismiss. Plaintiff does contend that he "ha[d] just been recently made aware of all court proceeding[s]" that presumably form the basis for his claims. (Pl.'s resp. 1.) This contention, however, does nothing to explain how some act of fraud on the part of a defendant in this case "debarred or deterred" Plaintiff from bringing the present action, O.C.G.A. § 9-3-96, and the word "recently" is unhelpfully vague. Although it is true that pro se pleadings are to be interpreted liberally, "the liberal construction given to pro se pleadings does not mean liberal deadlines." Robinson v Schafer, 305 F. App'x 629, 630-31 (11th Cir. 2008) (per curiam) (internal quotation omitted) (affirming district court's dismissal of civil complaint when pro se plaintiff failed to sufficiently allege a basis to equitably toll applicable statute of limitations). The court finds that Plaintiff had

Plaintiff's Complaint would be subjected to dismissal. Accordingly, the Court denies Plaintiff's motion to amend and grants Defendants' motions to dismiss Plaintiff's state law claims.

CONCLUSION

In summary, the Court makes the following findings based on the allegations contained in Plaintiff's Complaint and Plaintiff's proposed amendments thereto:

1. Plaintiff's SCRA claim against Judge Followill, OCSS and Hagler are barred by the Rooker-Feldman doctrine, and thus this Court does not have jurisdiction to decide them.
2. Plaintiff's § 1983 claims against Judge Followill are barred by the doctrine of judicial immunity.
3. Plaintiff's § 1983 claims against OCSS are barred because OCSS is not a "person" subject to suit under § 1983.
4. Plaintiff has failed to state a claim against Hagler for violation of 42 U.S.C. § 1983.
5. Plaintiff's state law claims against Judge Followill, OCSS and Hagler for illegal adoption and wage garnishment are barred by the Rooker-Feldman doctrine, and thus this Court does not have jurisdiction to decide them.

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ample opportunity to proffer facts that would support tolling the statute of limitations; in the absence of such proffer, the court presumes those facts do not exist.

6. Plaintiff's state law claims for false arrest or imprisonment, malicious prosecution, fraud and malpractice against Judge Followill are barred by the doctrine of judicial immunity.
7. Plaintiff's state law claims for false arrest or imprisonment, malicious prosecution, fraud and malpractice against OCSS are barred by principles of sovereign immunity.
8. Plaintiff's state law claims for false arrest or imprisonment, malicious prosecution, fraud and malpractice against Hagler are time-barred.

Based on these findings, the Court concludes that the amendments proposed by Plaintiff's cannot save Plaintiff's current Complaint from dismissal. Plaintiff's motion to amend (Doc. 23) is therefore denied as futile. Moreover, the Court grants the motion to dismiss filed by Defendants Followill and OCSS (Doc. 18) and the motion to dismiss filed by Defendant Hagler (Doc. 17). The Court also denies Plaintiff's motions to unseal court records and for a hearing (Docs. 2 & 23). Finally, as the Defendants Rachel and James Lewis, the court dismiss sua sponte Plaintiff's (1) SCRA claims; (2) state law claim for illegal adoption; and (3) state law claim for illegal wage garnishment because the Court lacks jurisdiction over these claims. See Fed. R. Civ. P. 12(h) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.")

NOTICE TO PLAINTIFF

As noted at the outset of this Order, neither Defendant Rachel Lewis nor Defendant James Lewis has filed a motion to dismiss. On its own motion, however, the Court has dismiss Plaintiff's SCRA claims and state law illegal adoption and wage garnishment claims for lack of subject-matter jurisdiction. The remainder of Plaintiff's claims against Rachel and James Lewis are still pending at this time.

The Court has serious concerns as to whether Plaintiff's remaining claims against these Defendants are timely. In fact, it is the Court's opinion that Plaintiff's present Complaint and his proposed amendments would not survive a motion to dismiss by Defendants Rachel Lewis and James Lewis based upon the expiration of the statute of limitations. Plaintiff is hereby notified that the Court intends to dismiss Plaintiff's claims against these Defendants unless Plaintiff files an amended complaint within fourteen days of today's Order that alleges specific facts showing that Plaintiff's claims against these two Defendants are not barred by the statute of limitations. See Am.United Live Ins. Co. v Martinez, 480 F.3d 1043,1057 (11th cir. 2007) (requiring that a plaintiff be notified of the court's intentions and given an opportunity to amend complaint prior to the Court's sua sponte non-jurisdictional dismissal.)

IT IS SO ORDERED, this 22nd day of May, 2009.

s/Clay D. Land
CLAY D. LAND
UNITED STATE DISTRICT JUDGE

APPENDICE
B

IN THE UNITED STAES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

JOAQUIN BROWN	*	
Plaintiff,	*	
	*	Case NO. 4 : 08-
CV-150 Rachel Lewis a/k/a (CDL) Rachel Brown; James Lewis; Richard Haggler, attorney; Kenneth Followill, Judge; Superior Court of Muscogee County Child Support Service for Muscogee County, GA.		*
Defendants	*	

JUDGMENT

Pursuant to this Court's Orders dated May 22, 2009 and June 25, 2009, and for the reasons stated therein, JUDGMENT is hereby entered in favor of Defendants. Plaintiff shall recover nothing of Defendants. Defendants shall also recover costs of this action. This 25th day of June, 2009.

Gregory J. Leonard, Clerk
s/ Timothy L. Frost
Deputy Clerk

IN THE UNITED STAES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

JOAQUIN BROWN Plaintiff,	*	
	*	Case NO. 4 : 08-CV-
150 Rachel Lewis a/k/a (CDL) Rachel Brown; James Lewis; Richard Haggler, attorney; Kenneth Followill, Judge; Superior Court of Muscogee County Child Support Service for Muscogee County, GA.	*	*
Defendants	*	

ORDER

In this action, Plaintiff Joaquin Brown asserts various federal and state claims against his ex-wife, Rachel Lewis, and his ex-wife's spouse, James Lewis. Plaintiff also made claims against his ex-wife's former attorney, Richard Hagler; Judge Kenneth Followill of the Muscogee County, Georgia Superior Court; and the office of Child Support Services for Muscogee County, Georgia ("OCSS"). The court previously dismissed those claims. See Brown v Lewis No. 4:08-CV-150 (CDL), 2009 WL 1457139, at *12-*13 (M.D. Ga May 22, 2009) (hereinafter May 22nd Order). Plaintiff's claims against the Lewises stem from a 1985

divorce and a 1990 adoption granted in Muscogee County. Because the Court finds that each of Plaintiff's remaining claims is untimely, the Court dismisses them sua sponte.

BACKGROUND

In the previous Order, the Court granted motions to dismiss filed by Defendants Hagler, Followill, and OCSS. Id. Although Defendants James and Rachel Lewis (the "Lewis defendants"') did not file a motion to dismiss, the Court exercised its authority under Federal Rule of Civil Procedure 12(h) (3) to dismiss the following claims against the Lewis Defendants for lack of subject matter jurisdiction: (1) federal law claims under the Servicemembers Civil Relief Act, 50 App. U.S.C. § 50 et seq.; (2) state law claims for illegal adoption; (3) state law claims for illegal wage garnishment. May 22nd Order, 2009 WL 1457139, at *12-*13; see also Fed. R. Civ. P. 12(h) (3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.") After dismissing these claims, certain claims against the Lewis Defendants remained pending: (1) Plaintiff's claims for false arrest and/or malicious prosecution under 42 U.S.C. § 1983 ("§ 1983"); (2) Plaintiff's claims for false arrest, malicious prosecution, and/or false imprisonment under Georgia law; and (4) Plaintiff's claims for fraud under Georgia law.

The court advised Plaintiff that it had serious concerns regarding whether these claims would be barred by their applicable statutes of

limitations. The court further advised Plaintiff that his present Complaint and its proposed amendments would not survive a motion to dismiss by the Lewis Defendants based upon the expiration of the statute of limitations. The court then provided Plaintiff with notice that it intended to dismiss Plaintiff's claims against the Lewis Defendants unless Plaintiff filed an amended complaint within fourteen days of the May 22nd Order alleging specific facts showing that Plaintiff's claims against the Lewis Defendants are not time-barred. May 22nd Order, 2009 WL 1457139, at *13; see Am. United Life Ins. Co. v Martinez, 480 F.3d 1043, 1057 (11th cir. 2007) (requiring that a plaintiff be notified of the court's intentions and given an opportunity to amend complaint prior to the Court's sua sponte dismissal on the merits).

On June 4,2009, Plaintiff timely submitted a response to the Court's May 22nd Order. In his response, Plaintiff contends that the statute of limitations did not begin to run on his claims until November of 2007, when he received a wedding invitation from his daughter. Plaintiff explains that he "questioned why his daughter was using the name Lewis on the invitation and this in turn lead to the discovery of all other court proceedings[.]" (Pl.'s Resp. to Judge['s] Partial Dismissal of Pl.'s Original Pet. & Jury Demand [hereinagter Pl.'s Resp.] 3.) The court has carefully reviewed Plaintiff's submissions and concludes that Plaintiff has again failed to allege facts sufficient to demonstrate that his remaining claims against the Lewis Defendants are not barred

by the applicable statutes of limitations. Accordingly, the Court dismisses those claims sua sponte.

DISCUSSION

I. Plaintiff's § 1983 Claims

Plaintiff's remaining federal law claims are for false arrest and malicious prosecution under § 1983. Plaintiff bases these claims on his assertion that on September 7, 1989, he was jailed for allegedly being in arrears on his child support obligations. (See compl. Para 5, at 5) Although it is unclear from Plaintiff's submissions to the Court whether he seeks to assert a false arrest claim, a malicious prosecution claim, or both type of claims under § 1983, both types of claims are time-barred. "Federal courts apply their forum state's statute of limitations for personal injury actions to action brought pursuant to 42 U.S.C. § 1983[.]" Uboh v Reno, 141 F.3d 1000, 1002 (11th cir. 1998). In addition, the "closely related questions of tolling and application" of the statute of limitations are governed by state law, Mullinax v McElhenney, 817 F.2d 711, 716 (11th cir. 1987), and Georgia law places "the burden of establishing the existence of any facts which wuld toll the statute of limitations" on the plaintiff, AAA Truck Sales, Inc. v Mershon Tractor Co. , 239 Ga. App. 469, 470, 521 S.E.2d 403, 405 (1999). In contrast, "[t]he question of when the limitations period begins to run . . . is one of federal law." Uboh, 141 F3d at 1002. Dismissal of a claim "on a statute of limitations grounds is

appropriate only if it is apparent from the face of the complaint that the claim is time-barred." Tello v. dean Witter Reynolds, Inc. , 410 F.3d 1275, 1288 (11th cir. 2005) (internal quotation marks omitted).

Georgia's "two-year personal injury limitations period applies to § 1983 actions in a Georgia district court." Kelly v Serna, 87 F.3d 1235, 1238 (11th cir. 1996); see also O.C.G.A. § 9-3-33. Section 1983 actions do not "accrue until the plaintiff is aware or should have been aware who has inflicted the injury." Mullinax, 817 f.2d at 716; see also Eubank v Leslie, 210 F app' x 837, 841 (11th cir. 2006) (per curiam) ("A cause of action accrues for purposes of determining when the statute of limitations period began to run when the plaintiff knew or should have know of his injury and it cause.") Plaintiff was jailed on September 7, 1989 and released nine days later. (Compl. Para 5, at 5.) Although his § 1983 cause of action for false arrest would not accrue until Plaintiff knew of his injury and its cause, Plaintiff knew of the arrest forming the basis for this claim as soon as it occurred; he cannot reasonably contend that he did not find out about this particular curt proceeding until November of 2007. This claim is untimely.

A plaintiff's malicious prosecution cause of action does not accrue "until the charges against him that relate to the case were resolved in his favor." Uboh, 141 F.3d at 1003. Plaintiff has repeatedly failed to allege any facts suggesting that

any underlying criminal prosecution was resolved in his favor. [10]

In fact, based on Plaintiff's submissions to the Court, the only event alleged by Plaintiff that could possibly have "terminated" his criminal prosecution was his release from jail in September of 1989; Plaintiff's submissions to the Court contain no allegation that any criminal judgment against him was ever challenged or overturned. Even pretermitting whether Plaintiff's release constituted a "favorable" termination of the underlying criminal prosecution, which it clearly did not, it is clear that Plaintiff knew of his injury and its cause when he was released from jail. This claim is also untimely. Because it is clear from the face of Plaintiff's submissions to the Court that Plaintiff's § 1983 claims for false arrest and malicious prosecution accrued in 1989 at the latest, these claims are untimely. Moreover, Plaintiff has failed to allege a legitimate basis for tolling the statutes of limitations applicable to these claims. Accordingly, the Court dismisses Plaintiff's § 1983 claims sua sponte.

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[10] Plaintiff's repeated failure to allege an essential element of his § 1983 malicious prosecution claim provides an alternative basis for its dismissal. Even if the court was to assume that Plaintiff's § 1983 claim for malicious prosecution is not time-barred, ti would still be subject to dismissal for failure to state a claim. Cf. weaver v Geiger, 294 F.App'x 529, 534 (11th cir. 2008) (per curiam) (affirming district court's dismissal of plaintiff's § 1983 malicious prosecution claim under 28 U.S.C. § 1915 (e) (2) (B) (i) because plaintiff had "presented no evidence showing that his conviction had been called into question, thus making such motion premature").

When statue of limitations questions arise in federal court, the court analyzes state law to determine what statute of limitations is applicable and whether that limitations period is tolled. See, eg. Duke v Sitherman, 32 F3d. 535, 537 (11th cir. 1994) (per curiam); see also 4 Charles Alan Wright & Arthur R. Miller, federal Practices and Procedure § 1056 (3d ed. 1998 & 2009 Supp.) (noting that "state law governs the tolling of the statute of limitations" in diversity actions.) As previously mentioned, Georgia law requires Plaintiff to establish the existence of facts that would toll the statue of limitations. AAA Truck Sales, Inc. , 239 Ga. App. At 470, 521 S.E.2d at 405. Federal law, however, controls whether the allegations supporting the claim's accrual date are sufficient for purposes of a defendant's motion to dismiss. Cf., eg. Bernard Schoninger Shopping Ctrs., Ltd, v J.P.S. Elastomerics, Corp., 102 F.3d 1173,1177 (11th cir. 1997) (finding that state "law determines when the applicable statute of limitations began to run in this case, but federal law determines whether the evidence supporting this starting date suffices to entitle the defendant to summary judgment"). It therefore must be apparent from the face of Plaintiff's complaint and proposed amendments that his claims are untimely. See Tello, 410 F3d. at 1289.

A . False Arrest, False Imprisonment, and/or Malicious Prosecution

Georgia recognizes three torts based on the

allegedly wrongful detention of a person: false arrest, false imprisonment, and malicious prosecution. Ferrel v Mikula, 295 Ga. App. 326,329,672 S.E.2d 7,10 (2008). Because it is unclear from Plaintiff's Complaint and his proposed amendments which causes of action Plaintiff asserts, the Court will address each.

A state law claim for false imprisonment has a two-year statute of limitations in Georgia. See, eg. McClendon v Kroger Co. , 279 Ga. App. 417,631 S.E.2d 461, (2006). Plaintiff cause of action for false imprisonment accrued upon his release from imprisonment. Campbell v Hyatt Regency, 193 Ga. App. 542, 388 S.E.2d 341,342 (1989). Plaintiff was released from jail nine days after his September 7, 1989 arrest. (Comp para 5, at 5.) Plaintiff fails to provide any explanation why he waited nearly twenty years after his cause of action accrued to challenge his imprisonment. Therefore, to the extent Plaintiff alleges a state law false imprisonment claim, the Court dismisses it sua sponte.

Plaintiff's claim for false arrest and malicious prosecution also have two-year statutes of limitations. See, eg. McClendon, 279 Ga. App. At 417, 631 S.E.2d at 461; Reese v City of Atlanta, 247 Ga. App. 701, 703, 545 S.E.2d 96, 98 (2001). False arrest and malicious prosecution claims accrue once the plaintiff can establish that the criminal proceeding terminated in his favor.[11] See, e.g.

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[11] Again, the Court cannot discern from the face of Plaintiff's Complaint or from any of Plaintiff's submissions to the court when Plaintiff's cause of action accrued because Plaintiff has repeatedly

McCord v Jones, 168 Ga. App. 891,892, 311 S.E.2d 209,210 (1983). As with Plaintiff's § 1983 claims for false arrest and malicious prosecution, the allegations in Plaintiff's submissions to the Court reveal that the only date that could possibly be construed as a "termination" of the underlying criminal prosecution would be the date Plaintiff was released from jail. Even assuming that Plaintiff's release could constitute a "favorable" termination, which it does not, it occurred in September of 1989, and Plaintiff has not alleged any legitimate basis for tolling the statutes of limitations on these claims. Accordingly, to the extent Plaintiff attempts to allege a state law false arrest and/or malicious prosecution claim, such claim would be time-barred. The Court therefore dismisses Plaintiff's state law malicious prosecution and/or false arrest claims sua sponte.

B. Malpractice

Plaintiff also brings a claim for "malpractice" under Georgia law. A malpractice claim is a claim for professional negligence. See, e.g., McMann v Mockler, 233 Ga App. 279, 280 503 S.E.2d 894, 896 (1998). A professional malpractice action in Georgia typically has a four-year statute of limitations. See, e.g., Old Republic Nat'l Title Ins. Co. v Attorney Title Servs., Inc., No. A09A0999, 2009 WL 1633537, at *1 (Ga. Ct. App. June 12, 2009). Georgia case law provides that a personal-injury action, such as a malpractice action,

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failed to allege that the underlying prosecution terminated in his favor. Thus, even if Plaintiff's claims were not time-barred, they would be dismissed for failure to state a claim.

"'accrue[s]' when an actionable injury is first sustained." Quinn v Stafford, 257 Ga. 608,362 S.E.2d 49, 50 (1987). Even assuming, arguendo, that Plaintiff has otherwise stated a malpractice claim, [12] the Court cannot determine when Plaintiff contends he suffered an actionable injury due to the "malpractice" of either Lewis Defendant. The most recent date in Plaintiff's submissions to the court that can be associated with an action of one of the Lewis Defendants is 2000. Thus, any claim for "malpractice" against either Lewis Defendants is untimely. The Court accordingly dismisses this claim sua sponte.

C. Fraud

Plaintiff's fraud claim against Defendant Rachel Lewis is apparently based on his contention that she "continued to harass (Plaintiff) by placing fraudulent paperwork into the court system with the help of her attorney Richard Hagler for child support on an adopted child and Judge had signed and seal[ed] the adoption papers." (Compl. Para 5, at 6.) In addition, Plaintiff contends that Ms Lewis filed allegedly fraudulent motions and fraudulently disposed of marital property. (Id.) Plaintiff's claim against Defendant James Lewis appears to center on the adoption of Plaintiff's daughter. Plaintiff contends that Rachel and James Lewis "could have found [Plaintiff] at any given time" and the "James

[12] The court connot discern from any of Plaintiff's submissions how either Lewis Defendant is a "professional" subject to suit. Thus, even if Plaintiff's malpractice claim was otherwise timely, it would be subject to dismissal for failure to state a claim upon which relief could be granted.

Lewis had to have agreed to adopt the minor child with Rachel Lewis and was aware of their illegal actions." (Id.) Plaintiff apparently alleges that he was injured by being required to pay child support after his child was allegedly illegally adopted by James Lewis. (id.) Fraud claims have a four-year statute of limitations in Georgia. See Hamburger v PFM Capital Mgmt. Inc. 286 Ga App. 382,387,649 S.E.2d 779, 784 (2007). A fraud claim accrues when an alleged misrepresentation results in actual damages, unless the plaintiff can show that the statute should be tolled. See id. at 387-388 & n.21, 649 S.E.2d at 784 & n.21. Even a broad construction of Plaintiff's Complaint, its proposed amendments, and Plaintiff's Response to the May 22nd Order indicates that the most recent allegedly fraudulent order that could be linked to either Lewis Defendant occurred in the year 2000. [13] (see e.g. Compl. Para 5, at 6; Ex. E to Pl.'s Resp. {reflection child support payments and/or garnishment of wages due to child support obligations beginning in 1986 and ending in 2000}.) The Court therefore turns to whether Plaintiff has sufficiently alleged that the statute should be tolled. "Georgia law provides that '[i]f the defendant. . . [is] guilty of a fraud by which the plaintiff has been debarred or deterred from bringing an action, the period of limitation shall run only from the time of the plaintiff's discovery of

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[13] Plaintiff contends that "[t]his suit is about an illegal adoption and illegal orders to the present," (Pl.'s Resp. 2), but Plaintiff does not point specifically to any fraudulent act he alleges was committed by either Lewis Defendant that occurred later than the year 2000.

the fraud.'" Hamburger, 286 Ga. App. At 388, 649 S.E. 2d at 784 (alterations in original) (quoting O.C.G.A. § 9-3-96). "In cases where the gravamen of the underlying cause of action is actual fraud, 'the statute of limitations is tolled until the fraud is discovered.'" Id. (quoting Shipman v Horizon Corp., 245 Ga. 808,267,S.E.2d 244, 246 [1980]). "[T]he fraud in question is not that which gives, but that which conceals a cause of action." Kerce v Bent Tree Corp., 166 Ga. App. 728, 729, 305 S.E.2d 462, (1983) (internal quotation marks omitted). "Concealment" that prevents the running of the statute of limitations must involve "some trick or artifice . . . to prevent inquiry or elude investigation, or to mislead and hinder the party who has the cause of action from obtaining information, and the acts relied on must be of an affirmative character and fraudulent." Id., 305 S.E.2d at 463.

Plaintiff contends that only the receipt of his daughter's wedding invitation in November of 2007 triggered his investigation into the extent of the purportedly illegal court orders. Even assuming the veracity of this statement, Plaintiff has failed to explain how some fraudulent act of either Lewis Defendant "debarred" or deterred" him from discovery the allegedly illegal orders. O.C.G.A § 9-3-96; see also Fed. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.") Because Plaintiff has failed to meet his burden of alleging facts sufficient to support the

tolling of the statute of limitations, the Court dismisses Plaintiff's fraud claim sua sponte.

CONCLUSION

As the court mentioned in its previous Order, "the liberal construction given to pro se pleading does not mean liberal deadlines." Robinson v Schafer, 305 F. App'x 629, 630 (11th cir. 2008) (per curiam) (internal quotation marks omitted). Plaintiff has had ample opportunity to proffer facts sufficient to support the timeliness of each of his claims. Absent such proffer, the Court must presume those facts do not exist. See id. (affirming district court's dismissal of civil complaint when pro se plaintiff failed to sufficiently allege a basis to equitably toll applicable statute of limitations). Accordingly, the Court dismisses, sua sponte, each of Plaintiff's remaining claims against defendant James Lewis and defendant Rachel Lewis, and this action is now dismissed in it entirety.

IT IS SO ORDERED, this 25th day of June, 2009

s/Clay D. Land
CLAY D. LAND
United States District Judge

APPENDICE

C

51c

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-13257
Non-Argument Calendar

D.C.Docket No. 08-00150-CV-CDL-4

JOAQUIN BROWN,
Plaintiff-Appellant,

Versus

RACHEL LEWIS, a.k.a. Rachel Brown,
JAMES LEWIS,
RICHARD HAGLER, Attorney,
JUDGE KENNETH FOLLOWILL,
Judge, Superior Court of Muscogee County,
CHILD SUPPORT SERVICES FOR MUSCOGEE COUNTY, GA.,
Defendant-Appellees

Appeal from the United States District Court
For the Middle District of Georgia

(January 12, 2010)

Before Stanley MARCUS, Charles WILSON and Peter FAY, Circuit Judges.

PER CURIAM:

Joaquin Brown, proceeding pro se, appeals the district court's dismissal of his complaint asserting claims under the Service Members Civil Relief Act ("SCRA"), 50 App. U.S.C § 501 et.seq., 42 U.S.C. § 1983, and Georgia state law against Rachel Lewis, James Lewis, Richard Hagler, the Honorable Kenneth Followill, and the Muscogee County Office of Child Support Services ("OCSS"). Because we agree with the district court that all the claims raised by Brown either fail to state a proper claim, are time-barred, are barred by immunity provisions, or are outside the scope of the districts court's jurisdiction, we affirm the district court's dismissal of all of Brown's claims.

I.

All of Brown's claims arose out of divorce proceedings, from 1985, with Rachel Lewis. At the time of the divorce, Brown was serving in the military. As a result Brown was deployed to Oklahoma then to Germany. According to Brown's allegations, which we assume to be true for the purposes of reviewing a motion to dismiss, he reached a temporary agreement with Rachel Lewis, her attorney Hagler, and the court(Judge Followill) on the terms of the divorce prior to deploying to Germany. Upon returning to Georgia, Brown

discovered that several orders had been entered by the court upon the motions of Lewis and Hagler during the time he was deployed in Germany. These orders altered the divorce agreement and eventually led to Brown being arrested in 1989 and held in jail for failing to pay child support. Brown was released from jail after nine days, paying fifty-five hundred dollars ($5,500), and signing over "everything" to Lewis. In 2007 Brown discovered that his daughter had been adopted by James Lewis (his ex-wife's new husband), without his knowledge or consent, in 1990. Brown continue to pay child support for his daughter after the adoption.

Brown filed several claims in the Middle District of Georgia, all arising from his divorce. Brown's claims under the SCRA were found to be barred by the Rooker-Feldman [14] doctrine and thus dismissed. The § 1983 and state law allegations against Judge Followill were found to be barred by judicial immunity. The district court found that Brown failed to state a claim for a § 1983 claims against OCSS and that state law claims against OCSS were barred by sovereign immunity. The district court dismissed Brown's § 1983 claims against Hagler on the basis that they failed to state proper claims. Brown's claims of illegal adoption and wage garnishment against Judge Followill, OCSS and Hagler were found to be barred by the

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[14] "The Rooker-Feldman doctrine provides that federal courts, other than the United States Supreme Court, have no authority to review the final judgments of state courts. Goodman ex rel. Goodman v Sipos, 259 F.3d 1327,1332 (11th cir. 2001).

Rooker-Feldman doctrine and dismissed. Brown's § 1983 and state law claims against Hagler, Rachel Lewis and James Lewis were also found to be timed-barred. The district court also denied Brown's motion to amend his complaint, as well as his motion to unseal state court records related to his daughter's adoption. Brown appeals the district court rulings.

II.

As an initial matter, we note that Brown's opening brief does not challenge the district court's grounds for dismissing several claims. Here, Brown's pro se brief does not challenge the district court's conclusions that : (1) his SCRA claims, state law claims, and claims of illegal adoption and illegal wage garnishment against Judge Followill, OCSS and Hagler were barred by the Rooker-felman doctrine; (2) his § 1983 claim and state law tort claims against Judge Followill were barred by absolute judicial immunity; (3) OCSS was not a "person" subjected to suit under§ 1983; (4) his state tort claims against OCSS were barred by sovereign immunity. Although we liberally construe briefs filed by pro se litigants, "issues not briefed on appeal by a pro se litigant are deemed abandoned." Timson v Sampson, 518 F.3d 870, 874 (11th cir. 2008). We also do not consider arguments raised for the first time in a reply brief. Id. Therefore, Brown has waived any arguments with respect to the district court's dismissal of his claims under the SCRA, his claims for illegal adoption and

illegal wage garnishment against all defendants, and his § 1983 and state law tort claims against Judge Followill and OCSS. We construe Brown's opening brief in the most liberal sense and address the remaining issues below.

III.

We review a district court's dismissal of a complaint for failure to state a claim de novo, "accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff." Leib v Hillsborough county Public Transp. Com'n, 558 F.3d 1301, 1305 (citation omitted). Although a plaintiff's complaint need not include detailed factual allegations, it must set forth "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955,1964-65 (2007) (citation omitted).

"We review de novo the district court's interpretation and application of the statute of limitations." Baker v Birmingham Bd. Educ. , 531 F.3d 1336, 1337 (11th cir. 2008) (quotations omitted).

A district court's denial of a motion to amend a complaint based upon futility is a legal conclusion that we review de novo. Mizzaro v Home Depot, Inc. 544 F.3d 1230, 1236, 1236 (11th cir. 2008) (citation omitted).

IV.

A. Brown's § 1983 Claim Against Halger Failed to State a Claim

In order to state a claim under § 1983, the plaintiff must show "(1) a violation of a constitutional right, and (2) that the alleged violation was committed by a person acting under color of state law." Holmes v Crosby, 418 F.3d 1256, 1258 (11th cir. 2005). A private party such as Hagler may be viewed as a state actor under § 1983 "[o]nly in rare circumstances." Harvey v Harvey, 949 F.2d 1127,1130 (11th cir. 1992). We employ three distinct tests for determining whether a private party acted under color of state law: (1) the public function test, which asks whether the private actors were performing functions "traditionally the exclusive prerogative of the state;" (2) the state compulsion test, which applies to situations where the government coerced or significantly encouraged the unconstitutional actions at issue; and (3) the nexus/joint action test, which applies where the state and the private party were joint participants in the common enterprise. Focus on the Family v Pinellas Suncoast Transit Auth., 344 F.3d 1263, 1277 (11th cir. 2003) (quotations omitted).

A private party may also be held liable under § 1983 when he conspires with state actors to violate the plaintiff's constitutional rights. Rowe v City of Fort Lauderdale, 279 F.3d 1271,1283 (11th cir. 2002). To establish a conspiracy for § 1983 purposes, "plaintiff must plead in detail, through

reference to material facts, the relationship or nature of the conspiracy between the state actor(s) and the private persons." Harvey, 949 f.2d at 1133.

In this case, Hagler was a private party who acted as Rachel Lewis's attorney in the state court divorce proceedings. In his complaint, Brown did not allege that Hagler was performing a traditional public function, or that the state had coerced or encouraged Hagler's actions. In addition, Brown did not assert that Hagler had entered into a agreement with Judge Followill or any other state actor to violate Brown's constitutional rights. Because Brown's complaint failed to allege facts showing that Hagler acted under color of state law, the district court properly dismissed Brown's § 1983 claim against Hagler.

B. Brown's § 1983 Claims and State Tort Claims are Barred by Relevant Statutes of Limitations

Dismissal of a claim "on statute of limitations grounds is appropriate only if it is "apparent from the face of the complaint' that the claim is time-barred." La Grasta v First Union Securities, Inc., 358 F.3d 1168, 1173 (11th cir. 2008) (citation omitted). In this case, Brown brought his claims in the state of Georgia, which has a two-year statute of limitations for personal injury actions. O.C.G.A § 9-3-33. All questions related to the tolling of the statute of limitations are governed by state law. Mullinaz v McElhenney, 817 F.2d 711,716 (1th cir. 1987). "The question of when the limitation period begins to run, however, is one of

federal law." Uboh v Reno, 141 F.3f 1000, 1002 (11th cir. 1998)

"A statute of limitations begins to run when the cause of actions accrues." Id (citation omitted). Generally, a cause of action under § 1983 does not accrue until the plaintiff knows or should know of the injury that forms the basis for the claim and the identity of the person who inflicted it." Mullinax 817 F.2d at 716.

1. Brown's Claims of False Arrest, False Imprisonment and Malicious Prosecution are Time-Barred

A claim for false arrest and false imprisonment must be brought within two years of the defendant's release from imprisonment. McClendon v Kroger Co., 279 Ga App. 417, 631 S.E.2d 461, (2006). Under Georgia law, "[a] malicious prosecution action must be brought within two years after termination of the underlying prosecution in plaintiff's favor." Waters v Walton, 225 Ga. App. 119,120,483 S.E.2d 133,134 (1997); O.C.G.A § 9-3-33. Brown brings this cause of action nearly twenty years after the arrest upon which he bases his claims of false arrest, false imprisonment, and malicious prosecution. Brown offers no explanation of why he could not bring this cause of action sooner or even if the prosecution was ever terminated in his favor. The district court properly denied this claim as being time-barred.

3. Brown's Claims of Malpractice are Time-barred

A claim alleging malpractice must be filed within four years of the complaint of injury. Villani v Hughes, 279 Ga. App. 618,619,631 S.E.2d 709,711 (2006). Brown fails to allege a specific date for the alleged malpractices claims, but the latest date mentioned by Brown in his complaint is 2000. Brown filed his complaint in 2008 which means that his claims are well outside the four year statute of limitations for malpractice. Brown also failed to state how either one of the Lewis defendants were professionals within his claims of malpractice. The district court properly dismissed all of the malpractice claims as they are either time-barred or fail to state a proper claim.

4. Brown's Claims of Fraud and Deceit are Time-Barred

Actions for fraud and deceit are subject to a four

Year statute of limitations. Hamburger v. PFM Capital Mgmt., Inc., 286 Ga. App. 382, 387, 649 S.E.2d 779, 784 (2007). Once again, the latest date mentioned in Brown's complaint is 2000, thus his complaint filed in 2008 was well outside the statute of limitations. Georgia law provides that the statute of limitations for fraud is tolled if the plaintiff can show the following: "(1) actual fraud involving moral turpitude on the part of the defendants; (2) the fraud must conceal the cause of action from the plaintiff, thereby debarring or deterring the knowing of the cause of action; and

(3) the plaintiff mush have exercised reasonable diligence to discover the cause of action, notwithstanding the failure to discover within the statute of limitation." Moore v Mack, 266 Ga. App.847, 849, 598 S.E.2d 525, 528 (2004). "The plaintiff has the burden of showing the existence of facts that would toll the statute of limitation." Falanga v Kirschner & Venker, P.C. 286 Ga App. 92, 94,648 S.E.2d 690, 693 (2007). Brown alleges that the illegal adoption of his daughter was concealed from him and therefore the statute limitations should be tolled. However, Brown has not shown adequate facts evidencing this concealment. Further, Brown has not shown that he exercised reasonable diligence in discovering the facts that his daughter had been adopted by another man.

Here, all of Brown's § 1983 and state law claims against Rachel Lewis, James Lewis and Hagler were untimely. In addition, Brown failed to allege facts sufficient to toll the statute of limitations with respect to any of his claims. Accordingly, the district court properly dismissed Brown's§ 1983 and state law claims as time-barred.

C. The District Court Did Not Err in Denying Brown's Motion to Amend

After a plaintiff has been served with a responsive pleading, he may amend complaint only with the consent of the opposing party or by the leave of the court. Fed. R.Civ.P. 15(a). Although the district court should freely give leave to amend "when justice so requires, " sc id., the court may

properly deny leave to amend if it concludes that the proposed amendment would be futile. Hall v United Ins. Co. of Am., 367 F.3d 1255, 1262-63 (11th cir. 2004). In this case, proposed amended complaint added citations to relevant Georgia statutes, but in all other respects was identical to Brown's original complaint. As we described above, all of Brown's claims would be time-barred even if brought under the Georgia statutes listed in his amended complaint. Because Brown's proposed amendment would have been futile, the district court did not err in denying his motion to amend his complaint.

D. The District Court Did Not Have the Power to Order Georgia to Unseal State Adoption Records

The district court construed Brown's motion as a petition for a writ of mandamus directing the Muscogee County Superior Court to unseal his daughter's adoption records. By statute, a federal district court may issue a writ of mandamus only to "compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361 (emphasis added). "[A] federal court lacks the general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties where mandamus is the only relief sought." Moye v Clerk, DeKalb County Superior Court, 474 F.2d 1275,1276 (5th cir. 1973) (citation omitted). [15]

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[15] In Bonner v City of Prichard, 661 F.2d 1206, 1209 (11th cir. 1981) (en Banc), this court adopted as binding precedent all decisions of the former Fifth Circuit issued before October 1, 1981.

Because the district court lacked the authority to order a state court to unseal adoption records, the district court properly denied Brown's motion.

Accordingly, we affirm the district court's dismissal of Brown's entire complaint.

AFFIRMED.

APPENDICES D

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-13257

JOAQUIN BROWN,
Plaintiff-Appellant,

Versus

RACHEL LEWIS, a.k.a. Rachel Brown,
JAMES LEWIS,
RICHARD HAGLER, Attorney,
JUDGE KENNETH FOLLOWILL,
Judge, Superior Court of Muscogee County,
CHILD SUPPORT SERVICES FOR MUSCOGEE COUNTY, GA.,
Defendant-Appellees

Appeal from the United States District Court
For the Middle District of Georgia

BEFORE: (Stanley) MARCUS, (Charles) WILSON AND (Peter) FAY, Circuit Judges.

PER CURIAM

The petition(s) for rehearing filed by appellant, Joaquin Brown is DENIED.

Entered for the court:

s/Charles Wilson
UNITED STATES CIRCUIT JUDGE
Filed February 24, 2010